

**MAUI PLANNING COMMISSION
REGULAR MINUTES
FEBRUARY 23, 2016**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Keone Ball at approximately 9:05 a.m., Tuesday, February 23, 2016, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Chair Ball: Call this meeting to order. It is February 23rd. What we're gonna do is we are going to go immediately into executive session for a little bit. I'm sorry that everybody got comfortable. You can put your name on your seats, same seats when you come back to discuss a few matters. So if there are...if there's a motion to move into executive session to cover the Item C-1.

Mr. Medeiros: So move.

Chair Ball: Is there a second to that?

Mr. Hedani: Second.

Unidentified Speaker: Who was second?

Chair Ball: Hedani second. All in favor of the motion say, "aye" and raise your hand.

Commission Members: Aye.

Chair Ball: Any opposed? Motion carried. Okay, we will clear the room and then we'll let you guys know when we come back into regular session. Thank you.

The Commission went into executive session from approximately 9:07 a.m. to 9:17 a.m.; the regular meeting was then reconvened at 9:23 a.m.

Chair Ball: ...back to order. Can we get the sign-in sheet, Paul? Thank you all for your patience. We'll now start out with public testimony. If you'd like to testify at this time you may do so. You will be allowed three minutes. You will not be allowed to testify again when the agenda item comes up however. So we will just go down the list, and if you did not sign in, that's okay, and you'd like to testify just come forward after we go through this list.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed.

Chair Ball: We will start with Frank Gymme or is he Gymme Frank? Followed by Barry Ewing?

Mr. Ewing: I'll wait till the item.

Chair Ball: Okay. Carole Eiserloh?

Ms. Eiserloh: I will wait.

Chair Ball: Okay. Julie Steiner?

Ms. Steiner: I'll wait until—

Chair Ball: Okay. I can't read your first name, Steiner, another Steiner. Michael or Mickel? Later? Okay, Mark Jesling?

Chair Ball: I'll wait. Jeff Kern?

Mr. Kern: I'll wait.

Chair Ball: Fred Allen? Fred Allen?

Mr. Allen: I'll wait.

Chair Ball: Is it Lynn Allen? Joseph Henschel?

Mr. Henschel: I'll wait, sir.

Chair Ball: Okay. I think it's Ethel Bilway? Glenn Kosaka?

Chair Ball: Mike Moran?

Mr. Moran: Wait.

Chair Ball: Walt Kubiak?

Mr. Kubiak: I'll wait.

Chair Ball: Richard Deleon? Richard, you're gonna wait? Richard Deleon.

Unidentified Speaker: He can't get past the crowd. Give him a second.

Chair Ball: Okay.

Seeing none, moving onto James Magliozzi?

Mr. Magliozzi: I'll wait.

Chair Ball: Thank you. Next up Melissa Bale?

Ms. Bale: Pass.

The following individuals testified at the beginning of the meeting:

Glenn Kosaka – Item C-2, Helen Lu`uwai, Conditional Permit Time Extension
Kahu Richard Deleon – Item C-1, Victory Development, CPA and SMA
Kahala Maui – Item C-1, Victory Development, CPA and SMA
Michael Reed Gach - Item C-1, Victory Development, CPA and SMA
Autumn Ness - Item C-1, Victory Development, CPA and SMA
Deborah Mader - Item C-1, Victory Development, CPA and SMA
Terez Lindsey - Item C-1, Victory Development, CPA and SMA
Zandra Amoral-Crouse - Item C-2, Helen Lu`uwai, Conditional Permit Time Extension
Kasper Rasmussen - Item C-1, Victory Development, CPA and SMA
David Ward – Item C-2, Helen Lu`uwai, Conditional Permit Time Extension
Lucienne deNaie – Item C-1, Victory Development, CPA and SMA
Item C-2, Helen Lu`uwai, Conditional Permit Time Extension
Philip Mayall - Item C-1, Victory Development, CPA and SMA
Mahinalani Kealakai - Item C-1, Victory Development, CPA and SMA
Tracy Ozuna - Item C-1, Victory Development, CPA and SMA

Chair Ball: Would anyone else like to testify at this time? Seeing none, public testimony is now closed. And we will take a five-minute recess.

A recess was called at 10:20 a.m., and the meeting was reconvened at 10:32 a.m.

Chair Ball: Okay, we'll call this meeting back to order. We are on now Item C-1, Victory Development. Director?

Mr. Spence: Good morning Commissioners and members of the public. We are on Item C-1, Victory Development requesting a Community Plan Amendment from Multi-Family to Hotel and a Special Management Area Use Permit for the Nani Loa Condominium Hotel project, a 39-unit condo project in Kihei. Our Staff Planner this morning is Mr. Paul Fasi.

C. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. VICTORY DEVELOPMENT requesting a Community Plan Amendment from Multi-Family to Hotel and a Special Management Area Use Permit for the Nani Loa Condominium Hotel project, a 39-unit hotel condominium project and related improvements on approximately 1.438 acres of land at TMK: 3-9-020: 032, Kihei, Island of Maui. (CPA 2015/0002) (SM1 2015/0004) (P. Fasi)**

Chair Ball: Hold on Paul, right before we go to you, we would like to get a few words from our Corporation Counsel. Gary?

Mr. Murai: Thank you Mr. Chair. This, my comments are I guess for the benefit of the public and for the parties. This Item C-1 is calendared as a public hearing on the request for a Community Plan Amendment and the Special Management Area Use Permit. However, now

with regard to the Community Plan Amendment what this commission is tasked with is whether and what kind of recommendation the commissioners gonna pass up to the Council. In other words, the Commission does not have the final say on the community plan amendment. All the commission does is make recommendations to the Council. As such, it is not a contested case hearing subject matter.

On the other hand, while this is a hearing on the SMA Use Permit as well, the commission will be taking public testimony and hearing from the Department on the SMA Use Permit matter. However, the commission will not be taking action on that matter today because it's kind of a, I guess it's kind of a chicken and egg kind of thing where the SMA Permit application cannot be heard until...if and until the community plan amendment is matter is heard by the Council. So there will be no decision making on the SMA Use Permit although public testimony will be taken today. That matter would be taken up some time in the future at the point after the Council...well, after any recommendations to the Council and Council action. Did I cover everything?

Chair Ball: Think so.

Mr. Murai: Thank you.

Chair Ball: All right. Thank you, Paul go ahead.

Mr. Paul Fasi: Thank you for that clarification Corp. Counsel. So today we're here to give a recommendation on the community plan amendment to the Council. The land use designations on this current parcel, State Land Use District is Urban. The Maui Island Plan it is in the Urban Growth Boundary. The Kihei Community Plan is Multi-Family. The County Zoning is H-2, Hotel. It is in the Special Management Area. But we are specifically here today to talk about the community plan amendment.

Back in 70's this particular parcel was part of a parcel known as the Kamaole Super Block which was then designated at that time for intense hotel development which is why it was originally hotel. In 1994...98, I'm sorry, it got changed from Hotel to Multi-Family. In '94, there was an SMA Use Permit that was approved for a 48-unit condominium project on this parcel. Back then it was 48 units. The applicant is proposing 39 units today. So it has been scaled back.

As currently designed the proposed project meets Title 19 zoning standards of the H-2, Hotel District but not the community plan. The community plan, the community plan height maximum right now is 75 feet. I believe they're way below that at about 45 feet is the highest. Seventy-five feet meaning as you go further inland they can go up to 75 feet, and of course they're not proposing that.

Also, the issue of drainage is a matter of concern with some of the applicants today and just basically what's happening on this parcel is that up mauka there's immediately about 300 or so acres according to the Maui County Master Drainage Plan that collects the rainfall and it funnels down into this gulch. But further mauka of these 300 acres, you know, you start getting into Ulupalakua, you start getting up into Polipoli and its massive funneling that channels down to this gulch that traverses through the parcel. They're not proposing to build on or inside the

gulch naturally. It is two buildings, 35 and 45 stories on either...on one side of the gulch. The development will mitigate—

Chair Ball: That's feet not stories.

Mr. Fasi: Yeah, feet sorry, 45 stories, thank you.

Chair Ball: ...(inaudible)...

Mr. Fasi: Just a slight minor detail. The applicant has proposed to mitigate 100 percent of post development runoff and in fact I believe they're gonna do an additional 20 percent of mitigation for drainage on their particular piece of property. So in essence what's happening is they're actually taking that 1.4 acres of drainage out of the drainage equation. So 1.4 acres compared to the 300 plus acres that immediately affect this particular parcel is not much. There's nothing they can do about it. It's just the lay of the land and that's just what happens when it rains in 100-year flood.

I'm going to turn the presentation over to the applicant so they can give you an overview of what the particular project is and give you the details of the project. But today I just want to reiterate that concentrate on the community plan amendment aspect and we will get into the Special Management Area aspect after the Council reviews this project. Thank you.

Chair Ball: You guys have an overhead? You guys wanna, you guys can sit down over there if you want? Sit down on those chair right there.

Mr. Jordan Hart: Good morning Mr. Chair and Commissioners. My name is Jordan Hart of Chris Hart & Partners. I'm here to present the Nani Loa Condominium Hotel Project. The project is proposing to change the Kihei-Makena Community Plan from Multi-Family to Hotel and is seeking a SMA Major Permit for the development of the project. Victory Development is the landowner and applicant. Mr. Todd Liebl and Greg Walker are here today representing Victory Development. At Chris Hart & Partners we have Raymond Cabebe who is the project planner, David Sereda is the landscape architect and myself, Jordan Hart. Civil engineer for the project is Otomo Engineering, Mr. Stacy Otomo is here, and the traffic engineer is Phillip Rowell. We did schedule Phillip Rowell to be here but he had a conflict and could not attend today so he will not be available.

This is a location map, the project site here mauka of South Kihei Road, makai of the north-south collector.

Mr. Higashi: Pull the mic and slower. I'm hard of hearing.

Mr. Hart: I apologize. I was trying to accelerate based on the amount of the time we're gonna be spending here today. This is an oblique aerial photograph. What this depicts is roughly the conclusion of construction for the Kihei Kai Nani project. The Kihei Kai Nani project was partially completed and the subject parcel was subdivided off, the mauka end of the project site with a perpetual easement access, easement for access and utilities to the project site. This has been the condition from the completion of development. And part of the configuration for

the Kihei Kai Nani as those residents purchased and inhabited their units. This is the roadway access from South Kihei Road. It's a utility and access easement. Here's an aerial photograph of the project site, the north-south collector road. These are other projects that either exist or have been proposed at various times, Aloha Villages, the Kihei Kai Nani, Kihei Ekahi, Kihei Banyan. As Mr. Fasi mentioned, the project is within the County's Urban Growth Boundaries for the Maui Island Plan. The project is abutting Hotel designation in the Kihei-Makena Community Plan but is designated Multi-Family. The applicant is requesting to change their community plan designation to Hotel. This is a zoning map for the County of Maui. This is what has been referred to as the Kamaole Super Block as you can see this is all H-2 zoning which is high density hotel zoning surrounded by medium density hotel zoning, H-1 lower density and BR Resort/Commercial. This is an oblique aerial photograph of the project site. The project site is here. The Kihei Kai Nani, Kamaole Shopping Center, Hale Pau Hana, Kamaole Beach Park II, currently existing north-south collector road.

The project is 39 units. It's two buildings consisting of a three and four-story building that's two and three layers of units above surface parking which will be underneath the buildings. It includes lanais, common area amenities. There are 83 parking stalls. This is a site plan of the project site. This is the existing drainageway. It is gonna be unchanged as a result of the project. These are photographs of the project area. These are Kihei Kai Nani buildings next to the project site. This is the culvert where the drainage drains from the project site onto the surface parking lot of the Kihei Kai Nani and runs makai to the ocean.

This is the landscape site plan for the project. At this time I'd like to bring up landscape architect, David Sereda from Chris Hart & Partners to go over the landscape.

Mr. David Sereda: Good morning. My name is David Sereda, landscape architect, Chris Hart & Partners. I'll go quickly through some of the highlights of the landscape plan. We landscaped the property primarily for privacy and shade and aesthetics. The...we're meeting the County requirements for shade trees with 16 native milo trees despite the fact that most of the parking or a substantial amount of the parking is shaded underneath the building but we are still using the shade tree requirement from the County Code elsewhere on the site.

We're using a number of native shrubs and groundcover. And we are providing screening around all four sides of the property with native Naio and A`alii shrubs which will grow to six to eight feet high or taller if you let them which will provide a lot of screening and privacy especially along the frontage adjacent to the neighboring properties. We're using eight different tree species and we will have 100 percent drip irrigation for the property.

Here's some of the species that we're proposing. You can see Ilima, Naio, A`alii, Ice Plant, Beach Vitex would be the native species. And here we have Coconut and Milo would be the native species for the trees. Thank you.

Mr. Hart: This table identifies the density of the project site and surrounding neighbors. You can see the Nani Loa project has 21.7 acres per unit. It's abutting Kihei Kai Nani has 34.7 and so what this is intended to indicate is that the project despite its small size is appropriately situated among its neighbors in the context of density. They're not proposing to maximize a small site, they're proposing to develop a small site consistent with existing patterns of

development surrounding them.

This lower table is the lot coverage and floor area ratio. So what is permitted in H-2 is 35 percent lot coverage and 150 percent floor area ratio. And what is permitted in A-2, Multi-Family zoning is 35 percent and 90 percent. And so the proposed project is below both of those permitted levels of density. They are proposing a project that's less dense than would be permitted under the Kihei-Makena Community Plan and the County zoning. I would like to go back and just kinda indicate what I'm talking about. That would be these developments surrounding the project site. The project is the lowest level of density of its nearby neighbors.

This is a site plan depicting the driveway access and utility access. The layout of the Kihei Kai Nani development and then on the upper portion it's showing a height relationship to surrounding developments. So the Kihei Ekahi is significantly taller. The Kihei Kai Nani is comparable height descending downslope.

One other thing to address is the table at the bottom which depicts the proposed heights of the buildings. Building No. 1 35 feet is two stories of units above surface parking. Building No. 2 is three stories of units above surface parking. H-2 Hotel zoning permits 160 feet in height. The Kihei-Makena Community Plan permits 75 feet in height at this location. So the project is proposing to be significantly lower than would be permitted by the Kihei Community Plan which will be the maximum of the overlay of zoning and Hotel designation for H-2. Also to note if the project were designated Multi-Family it would be lower than that height limitation as well.

These are elevations of the proposed project so you can see the character of design. This would be the relationship to the existing drainageway. I'll go through these. I believe these were shown at the EA. This is the circle roundabout that separates the Kihei Kai Nani from the proposed project site. The drainage culvert is here. That would be building two there. These will be looking from the north-south collector road. These do not accurately reflect the grass or landscaping in the mauka parcel, but this would accurately represent the backend or the mauka end of the proposed project site. Again, there's Kihei Ekahi ...(inaudible)...

Common area amenities. This is a lighting plan suffice to say that the project will comply with Maui County Code and will consist of downward shielded lighting as is a standard requirement. At this time, I'd like to bring up Stacy Otomo of Otomo Engineering to discuss the project's drainage plan.

Mr. Stacy Otomo: Good morning, Chair Ball and Members of the Maui Planning Commission. My name is Stacy Otomo. What we have here is a graphic representing the magnitude of the drainage area coming through the Nani Loa property which is indicated right here in the green. The drainage area actually goes mauka of Piilani Highway, encompasses about 307 acres. Of this it is calculated in the 1997 Drainage Master Plan that approximately 660 cubic feet per second passes through this drainageway and through the Nani Loa Property.

This is again a graphic of what's there in terms of the drainage around the area. What's depicted in this graphic is the Nani Loa development right here, the drainageway comes through this area. There's an existing headwall here with a box culvert that basically comes from this headwall, it outlets right here and some of the pictures that you saw previously that box culvert

is two feet high by seven and a half feet wide box culvert. It's trying to take 660 cubic feet per section which is not adequate. So what happens to the drainage is part of it goes through here. When this capacity is exceeded water flows on both sides of the existing circular area and down the Kihei Kai Nani driveway towards South Kihei Road. That is an existing condition with or without this project. What you see here in the blue was depicted there was we took two sections right here and right here and figured out how high the water would come in existing drainageway and the inundation limits for a 100-year flood is reflected here in the blue. So it doesn't quite reach the limits of where the new construction is gonna be. It's gonna be contained in the existing drainageway so we're not changing any of the drainage pattern within this particular area. Again, these are just the hydraulic models that we run that shows the inundation limits on the previous slide.

Generally what we're doing is allowing the 100 flow to pass through the project, go through the existing drainage system that's there and overflow to where it's going right now. What we're planning on the site is to exceed the Public Works criteria for drainage standards. We're not only gonna maintain the increase in runoff developed from the development but we're gonna maintain an additional 20 percent of the existing on the site so the bottom line is that there'll be less runoff coming off of this site after the development albeit, you know when you compare a one and a half acre parcel to the 300-acre drainage area it's fairly small but we're exacerbating the problem of drainage.

Mr. Hart: At this time...this is Jordan Hart from Chris Hart & Partners, I'll discuss roadways. So the access is from South Kihei Road. The access is a shared driveway with the Kihei Kai Nani. The project site has a recorded easement for the use of this area for utilities and access. The applicant has been in communication with the mauka landowner to secure construction access. They'll be able to discuss that further. I, myself, have been in communication with the north property owner. I corresponded with them via email. They are open to allowing construction access from the north parcel if the mauka parcel is not become an option.

The traffic report was prepared by Phillip Rowell who is a licensed engineer specializing in traffic studies. We did receive comment from the Maui Police Department. They did not identify this location as a significant area of safety concern or excessive congestion in the context of South Kihei Road. The traffic studies were taken in March and April of 2014 for the signalized intersections and for the...I'm sorry for the unsignalized intersections and Ke Alii Alanui occurred in September of 2014.

The standard requirement for the preparation of traffic studies is that the traffic studies be conducted when school is in session as opposed to you know, hotel high season and so that's when the traffic studies were conducted.

This is information about levels of service. Basically it indicates delays. There's...the ratings go from A to F. And A being the least level of delay, with F being the most extreme. So the lower table indicates the relationship for traffic from South Kihei Road to the project entrance. There is no intersection. This would be the intersection that we're discussing. It is basically a driveway going onto South Kihei Road. So in the context of the existing traffic from the community it's passing right by the project entrance with no inhibition there was a discussion the last time about how that worked and basically the north bound is an uncontrolled route and that

just means they drive through as they please. There's no signal stopping them when residents want to leave the driveway. The southbound will currently stop if they're trying to take a left into the project driveway because there is no left turn lane. As was discussed the last time at planning commission Public Works had recommended the restriping of that area of South Kihei Road so that a left-turn lane could be included so that when south bound trips are trying to take a left that South Kihei Road can continue and the applicant is open to that. The delay that would be experienced is the current delay which is people who live in the project trying to take a left south and cut across northbound traffic. There's no delay taking a right to head north. So these are basically existing traffic counts based on the traffic study. The A.M. peak in the subject intersection there are 870 cars passing and in P.M. there was 1,144 cars passing. The project horizon for this traffic study was sent to the 2020 based on projections of existing proposed developments the future A.M. peak is 1,010 vehicles passing this intersection and the P.M. peak is 1,370 vehicles. Nani Loa's contribution is determined by using the trip generation handbook from the institute of traffic engineers which is the standard for doing traffic studies as reviewed by Department of Public Works for the State Department of Transportation. The project contributes 24 trips in the A.M. peak which is 2 percent of the traffic that's occurring and the project contributes 28 trips in the P.M. peak which is 2.1 percent of the traffic that would be occurring in the location. So to reiterate although no traffic improvements are actually warranted by standards established in the preparation of the traffic study Public Works did request a left-turn lane and the project is open to proposing that or is you know, willing to do that as indicated in our past meeting with you.

This is the project site. Driveway, there is currently a signalized flashing crosswalk at the north end of the...on the north side of the driveway access. This is an aerial photograph of the existing condition. This depicts the future left-turn lane. What would occur is that the center median would be restriped. The side of the South Kihei Road would also be restriped and it would allow for a left-turn lane here. This is the mitigation that was proposed by Public Works and is supported and embraced by the applicant.

There was another issue that was brought up and it was phasing of utility improvements into the project's access and utility easement and so the applicant has determined a method of phasing the work so that basically not more than 55 stalls would be impacted at any one time, 55 stalls would be provided on the project site at that same so that basically while the applicant is improving their utility easement to provide the utilities for their proposed project there would be parking for the existing Kihei Kai Nani residents on their project site. When that is completed the applicant would focus on construction of the site itself. And so the way that is shown is basically there would be four phases none exceeding 55 stalls of impact at any time and that parking would be provided at the project site. It's not 100 percent convenient for the Kihei Kai Nani but they are neighbors and they do share a legal access and so it would just have to be part of the process.

In the context of addressing nuisance to neighbors from the construction phase the applicant is committed to scheduling work with Kihei Kai Nani. They're open to scheduling the most disruptive types of work during their low visitor season. And then obviously all standard requirements of the County of Maui and SMA process of observing best management practices through development would be observed.

Construction would occur during normally permitted construction times which is daytime hours. Through the preparation of the Draft EA we did receive comment from the following agencies, Environmental Management, Department of Finance, Housing and Human Concerns. I would note there was a significant comment about affordable housing. The project does comply with and will participate in the County's Workforce Housing Program which means it will have to either provide or contribute to the workforce housing fund or units. We received comments from the Department of Public Works, the Department of Water Supply. One other item that was brought up was the use of water. To reiterate the project does have water meters, County water meters. However, after our last meeting they have determined to provide an irrigation well on site.

In addition to that there was discussion of how the relationship to the existing R1 water line worked in regard to this project. It's currently approximately 5,500 feet to the north of the project site that is at Welakahao and also at the police station. There is no current plans to extend it to the Piilani Highway mauka of the project site, but the project is gonna be fitted to receive R1 water at the time that is available. So it will be prepared to receive R1 if that's an option. It is providing an irrigation well on site and then it also will use its existing County water meters for domestic and fire protection.

The project did also receive comment from Accounting and General Services, the State Department of Health, U. S. Fish and Wildlife. There was an assessment on whether or not the proposed project interfered with the drainageway and whether or not a Department of Army Permit was needed. The conclusion was that it does not interfere with the drainageway and that no Department of the Army Permit is warranted.

Regarding the public process for this project beginning in October of 2014 Victory Development met with the association board for Kihei Kai Nani and presented the project. They also presented the project to the full board of the Kihei Kai Nani. December of 2014 the project was presented again to the board president. In April of 2014, another update to the full board...I'm sorry the board president was completed. In May of 2015 the project was presented to the Kihei Community Association Design Review Committee. In September of 2015 there was a community meeting, the owner...Chris Hart & Partners mailed them out but the owner had 900 invitations mailed out because it's a densely populated area, there were 23 attendees after 900 meeting notices were mailed out. In June of 2015 the Maui Planning Commission reviewed the Draft Environmental Assessment and received comments from the commission and we adjusted the Draft EA. It finally became the Final EA. In August of 2015 received comments from the County of Maui Urban Design Review Board and made design adjustments based on those comments. In November of 2015, the Maui Planning Commission reviewed the completeness of the Final EA based on previous public input, comments, agency comments, planning commission comments and a Finding of No Significant Impact was determined. In December 8, the Finding of No Significant Impact was published.

Today as discussed procedurally you're hearing public testimony and having a public hearing on the SMA Major Permit and the community plan amendment and there's an anticipated recommendation to the Maui County Council on the community plan amendment. As you all know there's no way to receive an SMA Major Permit without community plan designation being in line with the zoning and proposed use and so after the project goes to Council for decision on

the community plan amendment it would be coming back to the planning commission for a decision on the SMA Major Permit to allow the development of the project. I'm not gonna rehash the summary. That's the conclusion of my presentation. Thank you very much.

Chair Ball: Thank you, Jordan. At this time, we'll open it up for public testimony.

a) Public Hearing

The following testimony was received at the beginning of the meeting:

Kahu Richard Deleon: Aloha ka kou.

Chair Ball: Aloha.

Kahu Deleon: My name is Kahu Richard Maele Deleon. I live in South Kihei, Maui. And my issue is about the Victory Development and because why...it bothers me because it's changing zoning. People that bought properties 20, 30 years ago was based on residential. When it change it again to high end density or hotels, it changes the dynamics of why the bought the property in the first place. So that's my question. Is someone set some kind of precedence or a ripple effects that you can change things in the middle of the game, it's moving the goal post around. So what kind of ripple effects that's gonna cause within the communities that gonna purchase or are allowed to buy properties at a different value, a different price which it's already outreachable. So I oppose based on that dynamics of the changes of zoning. So for me personal as a host and a state everybody loves, right? So to all of you it's nothing personal...(inaudible-turned and spoke to the audience)...

Chair Ball: Kahu address...and use the mic please.

Kahu Deleon: Yes, well my kupuna always told me to respect my elders, excuse my back, yes. So that's my mana'o. That is my thought. So it's about changing the zonings or changing it in the middle of the game which I oppose. Thank you very much.

Chair Ball: Any questions for the testifier? Kahu, Commissioner Hedani?

Mr. Hedani: Richard?

Kahu Deleon: Yes.

Mr. Hedani: The property that you're talking about is zoned H-2.

Kahu Deleon: It's zoned Residential.

Mr. Hedani: It's zoned H-2. Hotel.

Kahu Deleon: It's already Hotel zoned?

Mr. Hedani: It's already—

Kahu Deleon: So why is it changing then?

Mr. Hedani: It was recommended through the community plan for residential, but the zoning underlying the property is H-2, Hotel and it's been that for 20 years.

Kahu Deleon: ...(inaudible)...for how long?

Mr. Hedani: Since Kihei Kai Nani was built.

Chair Ball: Okay, thank you. Any further questions for the testifier? Seeing none, thank you.

Kahu Deleon: Thank you.

Chair Ball: Kahala?

Ms. Kahala Maui: Good morning everybody and thank you for hearing me. Okay, I hear that you're telling Richard that this was zoned as H-2 for 20 years now. So my question to you now changes to what is this C-1 about? It says Multi-Family to Hotel, okay. My testimony is more for all of this because I see vacation, vacation, vacation, vacation coming up, okay. What are we doing besides incarcerating our homeless people? What are we doing to help our residents get a home? If you keep on building all these vacation rentals and all these hotels not only are you desecrating the land, nobody ever thought about the lineal descendants of these properties before they quite titled them and rushed them out for money. And what are these rich investors gonna do with all this money? When they desecrate the land and they cannot feed their children natural food are you gonna feed your kid that dirty dollar that you just made? Most of these people that own these vacation properties don't even live here. That money that they rake in from those vacation properties goes back to where they live. And how does that affect the residents here? What about those of whom whether Hawaiian or non-Hawaiian have lived here for generations and are forced off these islands because they cannot afford to live in their homeland. And the more vacation rentals we have, the higher the rent goes. How is that supposed to work? You're supposed to be here to serve your community not people from elsewhere in the world. And I apologize if I offend any investors behind him but those million dollars that they're raking in, what's that doing for our people, what's that doing for our residents, what's that gonna do for your children when you can no longer take of them? And how does that affect everybody? We're destroying the ocean, we're destroying the land. Nobody ever came to me before they built resorts on the land that I am an heir to. Nobody came to me and offered me a dollar for that yet and still I live in my home island and I don't even have a house of my own. I can't even afford it. Why? 'Cause everything is vacation. And do you think that I'm alone? Do you think that I'm the only person? No, I'm just the only person here with a mouth. Okay, what about all the hundreds out there what are we gonna do keep on building prisons and incarcerating them? But do you guys think about that and you think about the morality of the choices that you make and the permits that you give and the zoning that you do and all the vacation rentals that you have and when you no longer have a resident to work in these vacation properties so be it. Everything collapses, right? Enjoy yourselves and have a good day.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Let's see, Michael Reed Gach?

Mr. Michael Reed Gach: Thank you I am pleased to present to the Planning Commission. It's news to me what you just said. It's been in the Maui News that this property for the Victory property is a Multi-Family Residential Hotel, H-2. Other notices all around my community have been told this to me. So I'm like well, what is, what is correct here? Look, the bottom line is in my testimony is anybody who knows this neighborhood, I am a resident of South Kihei. I'm an owner of Kihei Kai Nani and I'm an owner of Kihei Akahi. Yeah, when I bought in this is a vacant lot. It wasn't told to me that it was a hotel when I bought these properties. So somebody is lying, number one. Number two, there is congestion on this huge block and it's...and if you approve of it or if this is a hotel then there's precedent to create other hotels in back of the shopping centers, in back of these...the Banyan and Kihei Akahi, Kihei Kai Nani and this is a perfect recipe for gridlock. And that is not sweet, nice way to greet aloha here for our beautiful beaches and for the hotel...for hotel...other hotels as well as for the condominiums. I feel that the Planning Commission and I feel honored to say this to you has a great responsibility in terms of the pollution in Kamaole Beaches. I swam in these oceans 20 years ago. I know there was tremendous amounts of fish. It's not there anymore. People are other fishing but they're not catching anything because it just doesn't exist and I appreciate your smile because you know what I'm talking about. So it's environmental, it's in terms of the infrastructure. There is no infrastructure in South Kihei Road. It's just gonna get much, much worse. And the thoroughfare of bringing people through Kihei Akahi...through Kihei Kai Nani where there's residents within 35 feet and more of this Victory property having them bring their cars through this private property is, is not appropriate. There are people in the swimming pool at Kihei Kai Nani that's within 35 feet and it will be..well, as an owner and because of this gulch and the water that goes through I mean it's just gonna be devastating for all the reasons I've said. Thank you so much for listening to my testimony. Thank you.

Chair Ball: Thank you. Any questions for...Commissioner Higashi?

Mr. Higashi: I have a question based upon the fact that before you bought this property wasn't this particular area the ahupua'a that went from the mountain to the ocean and that this particular gulch area was a natural resource for water to flow to the ocean?

Mr. Gach: Right.

Mr. Higashi: So when the developments can in into this particular area did the people consider that if they're building in an area that is a natural drainage—

Mr. Gach: Yes.

Mr. Higashi: Would you think that they would be thinking about future developments coming in so that this water that's flowing is now becoming a problem?

Mr. Gach: Yes, yes. And the gulch goes right through the driveway of Kihei Kai Nani as you know and the Planning Commission here has a responsibility for looking at that issue. And it is a big issue, but my issue is the ecological and my issue is, and so environmental and secondly,

my issue is South Kihei Road infrastructure is not built for hotel...that many people. Already there's gridlock. Already there's congestion. You know that if you, if you just drive by at any time it's not just oh, certain little times. There's congestion all the time and it's frustrating that you can't get through these...this entire block. Do you know that, sir?

Mr. Higashi: Yes. I also know that Kai Nani has a population unit of 150 or so units there.

Mr. Gach: At where?

Mr. Higashi: At Kai Nani condo area.

Mr. Gach: Kihei Kai Nani.

Mr. Higashi: Yeah. And above that where Victory is supposed to be having their development proposal there's 39 units.

Mr. Gach: Right.

Mr. Higashi: So when you look at the idea about the natural hazard and the amount of water that's coming through there it would not have a major impact on this particular ahupua`a that has the natural drainage that goes down to the ocean that's natural.

Mr. Gach: Okay.

Mr. Higashi: So the concern right now I think for us Commissioners is that for my personal standpoint is that the County originally when former Elmer Carvalho was Mayor

Chair Ball: Commissioner Higashi is there a question to the testifier?

Mr. Higashi: Well, anyway I was getting back to the point about why Kihei is a tourist area because he designated that particular area for tourism and Central Maui is for the local people. Did you know that?

Mr. Gach: I know that condominiums have been built to put hotels in back of the condominiums you know, when there's already gridlock happening on the block does not seem like a very good way to plan.

Chair Ball: Thank you. Any further questions for the testifier?

Chair Ball: Okay. Autumn Ness? Sorry, please identify yourself too when you all come up to the podium. I forgot to mention that.

Ms. Autumn Ness: Aloha everybody. My name is Autumn Ness. I'm here representing myself and working families in Kihei in strong opposition to Victory Development's request for a community plan amendment from Multi-Family to Hotel. The community plan says that these 39 units should be multi-family homes that's because the community recognizes the dire need for housing for local people. This isn't part of my testimony but I just...I learned today that 20 years

ago the County decided that Kahului is for the people who live here and Kihei is for tourist. That would be great if I could afford a second car for my family, but the cost of living has go up so much in the last 20 years. I'm a family of three with only car because we can't afford another one so my husband has to ride his bicycle to work. We're not, you know, poor people. I just can't afford another car. It's not an option for me as someone who lives here to live in Kahului. So moving on.

Just a quick question of how many of you have tried to rent a home to live in in the last five years? Have you been a part of the rental market for you to find a home in the last five years? So you guys know a little bit about what I'm talking about. For the rest of you I'm gonna explain the details. I live in Kihei. Sorry, I'm gonna explain the details of the process and why keeping 39 units zoned as Multi-Family not Hotel not zoned, sorry in the Kihei Community Plan. It's so very important.

I live in Kihei and over the last year I have personally experienced the absurdity of the housing market and witnessed three of my friends struggle with homelessness because of it. My husband, my three-year-old child and I had to move a few months ago because our landlord raised our rent by \$250 a month at the same time that he started doing major renovations to our yard making it totally unusable so we had to move. Since tenants are required to give 30-day notices and most rentals rent the month prior to being available, you only have 30 days to find a place to live, right? It's like this race.

Right now two bedrooms you're lucky to find a two-bedroom for \$1,800 that's if you score, right? And the vast majority of landlords require that you prove that your take home household income is three times what your rent is, right? They require paperwork to prove that. That means that my husband and I would need a take home pay of \$5,400 a month to rent an \$1,800 a month two-bedroom. In reality, our take home pay after taxes is \$4,000 so we're already short, right? A BC-2 zoned County paid worker who makes \$18 an hour, this is someone with a good County job who makes \$18 an hour after take home pay, after taxes and insurance they have a take home pay of \$1,900 a month. That's less than what we make, a County well-paid, County mid-range worker, right? A two worker family working a mid-range County level job has a take home salary of \$3,800. Using the formula that landlords want you to only spend a third of your income on rent this working couple is eligible to rent something for \$1,266.

Ms. Takayama-Corden: Three minutes.

Ms. Ness: That does not exist, right? Some landlords require you to provide bank statements. I had to bring copies of my savings account statement to prove that I have enough savings on hand to pay rent should I become unemployed suddenly. At each home viewing that we went to, I'm not exaggerating there were 20 sometimes 30 families vying for the viewing. There's was people shoved into this little house, all kind of getting aggressive handing their paperwork at the landlord, right?

Chair Ball: Autumn?

Ms. Ness: What?

Chair Ball: Please conclude your statement.

Ms. Ness: Am I three minutes already.

Ms. Takayama-Corden: You're three minutes going on four.

Ms. Ness: Geez, okay. Anyway my conclusion is as two employed people with a child we didn't find a place to live. We were two months away...two days from being homeless. Our plan was to rent a U-Haul for an extended period of time, put all our belonging in the U-Haul and couch surf. I have a three-year-old daughter in school and we have two full-time jobs. That was my plan to not be homeless. We got really, really lucky and found a place to live but I helped three people employed, not mentally...no mental problems, responsible capable people who have been homeless in the last year in Kihei. This is a reality.

Chair Ball: Yeah, thank you.

Ms. Ness: Taking 39 units out of multi-family and zoning them for hotel is going to exacerbate the problem.

Chair Ball: Got it. Thank you.

Ms. Ness: I have the rest of my testimony here.

Chair Ball: Any questions for the testifier? Yes, Commissioner Robinson?

Mr. Robinson: Thank you for your testimony. I think a lot of people don't connect what's happening out there when they come into these type of developments and thank you for coming and sharing how hard it is for people out there and I hear you and I understand. A question for you now is you do have...you did find a place to live?

Ms. Ness: We found a place. One of my friends right now stayed on our couch a couple weeks ago because he has a dog and he's single and he can't find a place to live. You know, he has money, he has a job.

Mr. Robinson: Thank you for your testimony. I encourage you when it comes in front of the Council that you...you along with some of your friends share that with you...and I think that will, that will go a long way. Thank you.

Ms. Ness: I would appreciate it if you guys recommended to the Council before that's not...(inaudible)...

Chair Ball: Any further questions for the testifier? Thank you, Autumn.

Ms. Ness: I have the rest of my testimony. It has numbers like real people numbers who have real jobs if you guys could please read it?

Chair Ball: You can hand it in.

Ms. Ness: Can I give this to you?

Chair Ball: Next up is Debra Mader?

Ms. Ness: There's the Craig's List listings in here for rentals so you guys can—

Chair Ball: Thank you Autumn. You're out of order now.

Ms. Debra Mader: Aloha, Debra Mader, Kihei resident, homeowner. I am speaking in opposition to Item C-1. I do not want the community plan amended from Multi-Family to Hotel which is what Uncle Richard was trying to convey. Maybe he used the word, zoning instead of the community plan amendment, but this is what he was referring to.

Chair Ball: If you could pull back from the mic?

Ms. Mader: Just wanna make sure my voice was heard. When we moved to Kihei we purchased a condominium at Koa Resort. At the time it was 90 percent owner occupied. It was a place where teachers and small families such as mine with a newborn had a decent place to live. Fast forward seven years, it's now 90 percent vacation rentals they're posted on the VRBO this is one example. Kihei is getting a high school. If it was only meant to be for tourists why would be getting a high school in Kihei? Why would we have a community center? Why would be having mom meet up groups and parent nights and Kihei Community Association? The community plan is set forth to defend the community and it's grown and it's changed and it's not just a vacation place any more. I live three blocks from the proposed project. I'm all in favor of multi-family. I, too, own nearby at Keonekai Villages, a long-term rental property. We made it very nice, brand new on the island and when we put it on Craig's List the average rental there is \$1,800 and there's some people asking over \$2,000 for two bedrooms in Kihei, tiny like 600, 400 square feet. We asked 1,475 well below market because we wanted to give families a chance and it's plenty for us. Within six hours we had 40 people banging down our door. Families, kanakas, people...disabled veterans. My husband and I had one property to give and all these families within a few hours. So we picked the family that was expecting a baby and that had no credit and that didn't have a savings but they had enough money for first month and security. They've been excellent tenants ever since. We need more multi-family. This is a community. This is a homey neighborhood. We love our neighbors, we work together and we just don't feel there is a need for a hotel here. It's...the housing crisis in Maui is such that if we keep building vacation hotels and allowing all of these vacation rentals to hit the market we're just pushing out all the people that live and work here. And I hope that you just consider this testimony. I'll be more than happy to answer questions from my own experience.

Chair Ball: Thank you. Any questions for the testifier? Commissioner Hedani?

Mr. Hedani: I'm sorry, I didn't get your name.

Ms. Mader: Debra Mader.

Mr. Hedani: Debra, what caused the change at Koa Resort?

Ms. Mader: The crash of the housing market. There was some retired folk there that had lived for a long time, lost their retirement, had to sell because they couldn't afford to stay on Maui any more due to the high cost of living. So people who live off island snatched up the properties and just listed them as vacation rentals because they make more money renting to vacationers than they do to local people. You could maybe make 1,800 a month tops renting to local long-term, vacation you make three grand a month.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I would just like to correct you about my statement about Kihei being—

Chair Ball: Commissioner Higashi we're only gonna do questions here. We don't have to correct the testifier.

Mr. Higashi: Your question or comment about Kihei being Hotel zoned area is not something that also includes residential area, it doesn't mean that it should be all hotel.

Ms. Mader: What's your question?

Mr. Higashi: Do you, do you right now believe that Kihei should be all residential versus hotel?

Ms. Mader: No, that's not my statement. I was commenting on your statement to the earlier testifier saying that Kihei is a zoned community for tourism only. And my comment to that was it is a mixed community and we already have more than adequate hotel and transient accommodations available. What we have a dire shortage of is long-term rentals and affordable properties for people who live and work here and are from here.

Mr. Higashi: Thank you.

Ms. Mader: Mahalo.

Chair Ball: Any further questions? Commissioner Medeiros?

Mr. Medeiros: Mine is just a quick statement.

Ms. Mader: Question or statement?

Mr. Medeiros: No I just wanted to tell you what Maui needs is more landlords like you.

Ms. Mader: Mahalo.

Chair Ball: Thank you, Debra.

Ms. Mader: I would be more than happy to support or to submit supporting documents for all that I have said with the statistics and all of those things, Chair.

Chair Ball: Terez Lindsey.

Ms. Terez Lindsey: Good morning everyone. So my name is Terez Amato Lindsey. I am here on behalf of the Sierra Club and we are testifying, of course, on C-1, the Victory Development amendment. So the Sierra Club stands essentially as everyone pretty much well knows that we support the community plan. The community plan is the process by which the people are able to have an influence about what goes on in their neighborhood. So the Sierra Club firmly believes that people deserve a voice and therefore, the plan should be upheld as it was.

So a little history, this particular property in question already experienced a lot of discussion in the last community plan update. Back in '93 the Planning Commission in their Kihei-Makena Community Plan review recommended that this land be redesignated from Hotel to Multi-Family. So it was originally Hotel and then the community decided hey, we don't think that's a good use for the land let's change it to Multi-Family. Well, apparently the Maui Planning Department also agreed and in 1997, they recommended that the County Council Land Use Committee vote to change this parcel and the five adjacent vacant parcels from Hotel and Business/Commercial Use to Multi-Family. So this is kind of already a said and done thing. So in response to the overwhelming community support for the Multi-Family designation the County Council adopted that designation and the final adopted Kihei-Makena Community Plan in 1998. The Kihei-Makena Community Plan also clearly states, that further hotel expansion in Kihei is not desired. On Page 17 of the Kihei-Makena Plan under Land Use Objectives and Policies the plan states a clear goal, limit hotel uses to those areas presently planned for hotel use and limit hotel development until adequate public facilities and services are established to meet existing needs. This land was specifically not planned for hotel use in the Kihei Community Plan. Now the newest landowner wants to amend the community plan to go against what was decided through the community planning process. Our traffic concerns in the Kamaole area have not improved nor have the drainage conditions. Adequate public facilities and services are not available to support 39 more units on this landlocked parcel. The appropriate community plan designation for this 1.4 acre parcel is Multi-Family. The adjacent homeowners have been trying to make that case. Please do not vote on the community plan amendment today and instead approve the intervention and allow the neighbors who know this land well to make their case. They have watched the traffic patterns and the drainage patterns for years. They have worked to get the property zoned as Multi-Family rather than Hotel in the 1998 Makena-Kihei Community Plan update.

Ms. Takayama-Corden: Three minutes.

Ms. Lindsey: Planning Staff may get to visit the site a few times but residents know it really well. This local knowledge should be valued by the commission. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Commissioner Hedani?

Mr. Hedani: When...in 1993 when the community plan was changed what was it changed...what was the prior community plan designation for the property?

Ms. Lindsey: It was originally Hotel, Commercial and Business,.

Mr. Hedani: So the original community plan was Hotel and it was changed in the community plan to Residential Multi-Family?

Ms. Lindsey: That's correct. When the community was able to get together and really look at the area and what was going on—

Mr. Hedani: For this parcel as well as five other parcels?

Ms. Lindsey: Correct. For the five adjacent.

Mr. Hedani: At the time that the community plan was changed from Hotel to Multi-Family Residential did the community obtain the consent of the owner?

Ms. Lindsey: I am not sure specifically what that was, but I know that the land I believe has changed ownership in that time period. So originally it was approved and passed that way that it would be Multi-Family.

Chair Ball: Okay, any further questions? Seeing none, thank you.

Ms. Lindsey: Thank you.

Chair Ball: Don and Debbie Cary?

Mr. Kerry: Pass.

Chair Ball: Tom and Linda Doll? Okay, that's all I have that is signed up at this time. If anyone else would like to testify at this time come forward. Sir, please identify yourself and you have three minutes.

Mr. Kasper Rasmussen: Aloha and good morning. My name is Kasper. I work down the hill from the thing that you are talking about. I've been working down there for 14 years. I'm a homeowner in Kihei. And I'm testifying on behalf of myself. And having dealt with guests, owners, property issues, beach issues, life guard, what happens out in the ocean, the run off, the storms, the drainage situation and all of those things, I think, and I've heard a lotta testimony about here is we need somebody who cares.

I know you guys have a tough job, you have to decide who's gonna be able to build and what they're gonna be able to build on there, but I think in the end the individual who we have sitting behind me here Gregg, I'm a avid scuba diver, so is Gregg, turtles and things out there is something we care very deeply about and what happens out in the reef and I know he does too. I think he's a caring individual and I stand in front of you because I think you should let him have it. Let him go at it and do the right thing with the land and I think he can. This is not a guy from California or Montana that's trying to make buck. This is a local guy, one of us, that's trying to take care of the community the right way. It's 26 or 36, where I'm at we have 80, we're right on the beach and we're not containing any runoff neither is anybody else around there because we were all built back in the old days. He's doing something about it. He's thinking about it, and I think he's doing the right thing. Obviously he needs some guidance from you guys as to what

you wanna see, but I think overall, if you don't let him go ahead, we're gonna get somebody from Montana that doesn't care. Thank you very much. Have a good day.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Would anyone else like to testify at this time?

Ms. Lucienne deNaie: Switching gears to Item C-1. I am now testifying on behalf of Maui Tomorrow Foundation, Executive Director of the foundation Albert Perez apologizes that he can't be here today. I am the newly elected president of Maui Tomorrow and am testifying on behalf of the board. We are concerned about the precedent that's being set in the reverting...community plan amendment to revert back to the higher density in this area. People have referred to the fact that it was originally zoned Hotel, but you know everything in Kihei was zoned like in mass after the 1970's 701 plan and it was like someone looking at a piece of paper and not looking at all at the lands to see how it would all work out. Well, the community planning process is a chance to kind of like update from what we now know on the ground. That's how it works. That's...otherwise we just pass one community plan and never look at it again there'd be no need. People could just amend it and you know, you wouldn't need citizens to weigh in, you wouldn't need the updates of the technical reports and so forth. But the case here is it did get changed and I was at many of those meetings personally. It got changed after a lot of thought. The idea was there was plenty of hotel and hotel like uses already in Kihei we needed to balance it with residential. That was the dream of the 701 plan and so you can't just give out the entitlements and then not also follow through on the intention to have that balance. The Environmental Impact Statement on this is not really up to par that's why it's being challenged. So you're being asked to base your decision on this statement that really just claims no impact, no impact, no impact whereas if you were digging down deeper there are impacts and based on that really Maui Tomorrow encourages you to defer your decision making on this. Let folks have their day in court and give you the benefit of their advice, the intervenors. I read the rationale for not letting them intervene and I have to say it reminds me very much of when some members of this board heard from some intervenors on the Wailea Resort and said, oh no, no, no, you know their interests were the same as the public. Well guess what? That didn't hold up in court. And you know, it really doesn't when people take the trouble to intervene their interest usually area far more different, far more intense than those of the general public. These folks will have all the traffic pass right through their parking lot. The general public doesn't have that condition. The general public will never see that. They really deserve to be heard and you deserve to give them...I mean, they deserve your consideration. So we thank you for taking that opportunity to let our public process really function.

Chair Ball: Any questions for the testifier? Seeing none, thank you. I saw someone wanted to testify.

Mr. Philip Mayall: Good morning, my name is Philip Mayall. We have a home on Omiko Place which is just up the hill from the proposed development. I'll just read you a little thing I wrote. I don't know how many of you got it or not but it's a email and it says, dear civic leaders I'm writing in regard to the proposed changes of the Nani Loa Condominium Hotel on South Kihei Road.

Mr. Higashi: Sir, can you speak in the mic?

Mr. Mayall: Sure. So, better? Thanks. I'll just say I listened to the birds this morning and they're still louder than the morning traffic. They compete, the birds can still be heard and then I think about adding the layers of noise and industrial sized air conditioners, trash compactors, delivery trucks and additional car traffic and hotel staff and visitors and paving over what's been the bird's home for a long, long time and I think that once these changes are made they will probably never be undone. Chances are slim that the parking lots would every become bird sanctuaries. I understand the developers need to develop and I don't have a problem with that, but I do have a problem with them trying to bulldoze their way to changing the existing plan. They're proposing mixing single-family homes and hotels. I use the word plural because when one of these parcels is rezoned it's only reasonable that the others will have an expectation of being granted the same consideration. I'm sure Victory Development would be glad to get approval for a 10-story or 20-story or 30-story hotel if they could. I understand that they've been entrusted with their investor's money and their responsibility is to make as much money as they can and move onto the next drive by development. But those of us who are not Victory Development have a different responsibility. Responsibility of considering whether we want to take step toward being a noisier more congested, more polluted area or we want to take a step toward being the anti-Las Vegas where people want to take a deep breath, hear the birds and feel peace and rejuvenation in a paradise like setting? I think that if in the future Maui decides that they really do need one more hotel there will be plenty of victory developments available to accommodate that. I think the name Victory itself implies winners and losers. If I have to choose I would go with the many people whose homes and lives would be impacted by the construction of a hotel on this site. There would be the noise and disruption of construction but it wouldn't end. The construction traffic would be replaced by the delivery trucks and the visitor traffic. So I urge you to deny the proposed changes to Victory. Thank you.

Chair Ball: Any questions for the testifier? Seeing none, thank you. Would anyone else like to testify at this time? Please come forward.

Ms. Mahinalani Kealakai: Aloha, I am Mahinalani Kealakai known to my people as her highness Kahanu. I am a heir to the largest heiau in all the Hawaiian Islands. I am said today. This is the first time I'm doing this, but I am sad to see what's happening to our island. I lived on Oahu and being in traffic it got worse, okay. And whatever you people have to do I hope it's gonna be for our future of all our people and not just making money because the thing is our people still suffer and now I find that it's non Kanaka Maolis that are being also hurt. So as far as Kihei is concerned, I'm an employee of a security company and I was said that the coconut trees were being marked to be knocked down. This to me was ordered by our queen to have coconut trees for our future children. This is coconut trees. It's healthy. I also heard that there's gonna be four-story timeshare. The thing is I told the people that was coming to visit nobody listens anymore. It's supposed to be just two-story and already we have like some of the people are talking and saying traffic is bad. I don't wanna see Maui become like Oahu or Waikiki. Please whatever is happening today I'm not one that my brains is so big, I don't read the paper, I don't watch news because it's all negatives. You people are here to listen, but are you folks gonna really listen? Nobody listens anymore? I just came from another meeting and it was for the Kanaka Maolis aloha aina and how they talk about submitting paperwork that nobody listens they just put it on the shelves. Come on, this is our future for Maui let's make it a better place and not make it like Oahu. We don't need another Waikiki and stop. Four stories is no and this

hotels that have a lotta empty rooms go do a timeshare with them because it makes more sense to have empty rooms than rooms that have people. Please you are looking at your children also. And I thank you for listening to me.

Chair Ball: Thank you. Any questions?

Ms. Kealakai: Nice seeing you.

Chair Ball: Any questions for the testifier? Seeing none, thank you. Would anyone else like to testify at this time?

Ms. Tracy Ozuna: Aloha. My name is Tracy Ozuna and I was fortunate to buy in the Iliwai Loop just directly behind the proposed rezoning change. You know, I've been so fortunate to live out here and pursue the American dream of owning a home and having a car and being able to work on this beautiful aina. And I'm fortunate enough there's a sliver of ocean view in my line of sight where I can just see the wind line coming up and that makes me so happy every morning just to have this little line of sight. And if this zoning goes through it's almost like it's a form of spot zoning. So as soon as the one zone is rezoned, all of these other adjacent properties are going to petition you and say can I can be a hotel too? Can I build a four-story hotel as well? Because we are setting precedence here. This is a residential neighborhood in a housing crisis. There are thousands of people on this island vying for any property that they can come into contact with. For me, I was fortunate enough to buy because it was cheaper for me to buy a home out of what I thought I could do than to find another rental. Mortgage is cheaper that it would be for me to rent a home in my neighborhood. And fortunately I had enough credit to be able to do that and not everyone does. Most people don't. And if you rezone all of this, more people will not be able to afford to buy homes. And I mean, the gain to the public for the rezoning is so small compared to the hardships that are going to affect the residents and surrounding the neighborhood. It's not just about the congestion, it's not just about the detrimental effects it will have to our land by having a higher population in this area than it was deemed appropriate, the environmental studies, everything. Our water in this whole Kamaole, you know...all along these beaches already the pollution down there just from the runoff and everything going down is so much greater in the last ten years and that where does it stop. It should be balanced to restore adequate residential growth alongside any urban developments. There has to be balance. I mean, what he said about the love birds, you know, in the morning. We are so fortunate, we have wild love birds in our neighborhood. There's so few places where even the birds can go to just...I'm sorry, I'm not getting everything across that I want to say, but we're just so fortunate to live on this beautiful island. We have to protect it and that's your responsibility and you have to create balance for us because we're not in charge of that that's your area of expertise and by rezoning this one little plot, you can change an entire community, and that would be so unfortunate not only for myself but for our future generations. For my keiki who are growing up here who will probably never be able to own a home at the rate that things are going at this pace. We have to plan for the future. We can't just think about right now.

Chair Ball: Thank you.

Ms. Ozuna: Thank you.

Chair Ball: Is there any questions for the testifier? Seeing none, thank you.

This concludes the testimony received at the beginning of the meeting.

Chair Ball: For those of you that did not testify you could do so now. If you've already testified you will not be allowed to testify at this time. With that being said, I will go through the list and you can tell me if you still want to testify. Gymme Frank?

Ms. Gymme Frank: I do have a handout. Thank you. I'm Gymme Frank. My family has owned Unit 160 at the Kihei Kai Nani in Building 8 since the early '80s. I urge you not to change the designation of Lot 1A from multiple family to H-2. This would set a precedent for changing all of the vacant land surrounding Lot 1A from multiple family to H-2. South Kihei Road there is nonstop traffic because the area has become so overgrown during the past 30 years. There may be a serious liability issue which the County will be taking on if they permit the zoning to be changed to hotel. I am submitting multiple copies of eight photos that I took during various days and times in order to demonstrate the nonstop traffic entrance to the KKA. If the zoning stays multiple family the impact on additional traffic on South Kihei Road would be minimal. If it is changed to Hotel zoning this could result in as many as over 100 additional vehicles trying to enter Kihei Kai Nani driveway from South Kihei Road during the day. Thank you for the time you've given me to speak to you today about the proposed new build out development mauka of Kihei Kai Nani Condominium. Kihei Kai Nani was built in 1970 there are 180 units which share the one driveway with parking on either side the width of which is no longer up to Code for new construction. We request that Maui County not change zoning of Lot 1A to...from multiple family to Hotel. Mahalo.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Next up is Barry Ewing?

Mr. Barry Ewing: Hi, I'm Barry Ewing. I've been a resident of Kihei Kai Nani for ten years and I've been a realtor for 27 years. I've never seen a project, a hotel project where you drive through some inexpensive condominiums and those are the least expensive condominiums along there to drive into a luxury hotel. Now come on whoever heard of that? And this is not a street it's our driveway. You take a look at this and you can put it on the microfiche.

Chair Ball: Pass it around. Continue.

Mr. Ewing: Pass that around. Our driveway in some areas in the parking there is less than 20 feet, 17 feet and if we have trucks and construction equipment and trash trucks going up and down that driveway at times there's over 300 people walking up and down that driveway. I mean there's sidewalks on one side but most people use the driveway. And the property values if you allow this project is just going to plummet for a couple years of construction those people will not be able to sell their units they will not be able to rent their units. A 150 of the 180 units there people do rent, not all the time but they do rent. And if you put the notion out that there's gonna be construction for two years, Air B&B, VRBO, Expedia, Home Key, Flip Key, all of those they'll put that word out and they will not be able to rent their units. Who wants to be in there with construction going on? So the poor people that own those units they're not high end, these are just working class people that own those units will not have any income coming in during

that time. And urge the planners not to agree to this project. It doesn't make sense. As far as the drainage goes that needs to be a catch basin right there. That's what needs to be there, that and part of the five acres. You funneled all the water down, the County's done it, funneled all the water down to that point and that needs to be a basin not a hotel. Thanks.

Chair Ball: Any questions for the testifier? Commissioner Lay?

Mr. Lay: So you live on that area below?

Mr. Ewing: Yes, I live on the property and in the last two years or last five years we've had two of those major floods and it's all about, it's all about...

Mr. Lay: Okay, well I have a question about that so do you live at the beginning where you turn in or are you at the top portion?

Mr. Ewing: I live in the middle by the pool.

Mr. Lay: Okay, so what they're thinking of doing now when the development and projects going and moving along is they're gonna be moving their parking area and you're parking on the top.

Mr. Ewing: Up in their dirt.

Mr. Lay: In your residence or people with you are they retired? What's the majority of the people that live in this area?

Mr. Ewing: Retired.

Mr. Lay: So they're—

Mr. Ewing: Or retirement age.

Mr. Lay: There might be some difficulty with getting back and forth from your parking area that's —

Mr. Ewing: Of course. We have all kinds of handicapped spaces in there right now for people. Gonna park 'em up there on a dirt parking lot?

Mr. Lay: Okay, thank you very much.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I'm sorry, I didn't get your name?

Mr. Ewing: Barry Ewing.

Mr. Hedani: Barry, when was the Kihei Kai Nani constructed?

Mr. Ewing: 1970. They're 45 years old. And let me—

Mr. Hedani: Let me ask a question.

Mr. Ewing: Go ahead.

Mr. Hedani: At 45 years old is the project still in good shape?

Mr. Ewing: Fairly good shape yes.

Mr. Hedani: So there's another 45 years in lifespan for the project?

Mr. Ewing: Yeah, the only problems that we have of course is like everybody else's is the plumbing, you know, is getting older, but other than that...

Mr. Hedani: The question also that I had is you mentioned that 150 of the 180 units in Kihei Kai Nani are operated as a hotel?

Mr. Ewing: Absolutely.

Mr. Hedani: So they're not used as multi-family residential?

Mr. Ewing: No.

Chair Ball: Any further questions? Seeing none, thank you. Carole Eiserloh?

Ms. Carole Eiserloh: Good morning Mr. Spence and Members of the Planning Commission. My name is Carole Eiserloh and my husband Lothar and I have owned our Kai Nani Condo since 1984. We've resided there since 2006. First I would like to say that I'm very distressed that we were not notified about the Victory EA meeting in November as promised by Paul Fasi to Beth Belanger the then president of the association and me after the initial June EA meeting. We certainly would have been here to critique Victory's presentation which in our view did not address the recommendations by the planning commission in the initial EA meeting. We strongly object to Victory Development's request for a community plan amendment changing their MF status to H-2 on their Nani Loa development.

In 1970 this area was part of the Kamaole Super Block which allowed high density hotel development. But in 1998, the Kihei-Makena Community Plan changed the H-2 zoning to MF as Maui residents saw the rapid development taking place in Kihei and Makena to the detriment of the community and environment and recognizing need for multi-family land use designation...this is a quote directly from the community plan which provide housing opportunities to areas which are in close proximity to infrastructure systems and other urban services and quote again, provide a garden setting. It limited hotel uses again this is from your plan, to those areas presently planned for hotel use. Maui County has labeled nearly every vacant property in South Kihei as H-2 which is the highest density hotel zoning allowing 12 stories and 150 percent floor area ratio. This totally contradicts the Kihei-Makena Community Plan which states all zoning applications and/or proposed land uses and developments shall be

consistent with the land use map and objectives and policies of the Kihei Community Plan. Clearly there is a conflict between the two documents. If Victory Development is given H-2 status a precedent will be established and every owner of vacant property in the Kamaole Super Block could petition for the same. And although Victory's current plan call for lower structures if given this designation they can modify their plans or sell to another developer who will. To tamper with the long and hard won efforts of Maui residents who worked hard to balance the needs of the community undermines our democratic ideals. The plan considers the future needs of our island. I shudder to think how Kihei-Makena would look now if this plan had not been implemented in 1998. The planning commission needs to consider whether it is more important to increase hotel homes to meet the growing needs for multi-family housing. We sincerely hope you will not override the Kihei-Makena Community Plan and turn South Maui into another Waikiki. Remember Maui no ka oi. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing none...Commissioner Hedani?

Mr. Hedani: Yes, can you tell me what the underlining zoning is for the Kihei Kai Nani project?

Ms. Eiserloh: When it was built it was considered to be Hotel. In 1970 at the same time that the Super Block was created. However our structures are—

Mr. Hedani: So it's H-2?

Ms. Eiserloh: Pardon me?

Mr. Hedani: So it's H-2?

Ms. Eiserloh: I don't know if it was H-2. Our structures are...they're two and three-story. We don't have even any four-story buildings.

Mr. Hedani: Right.

Ms. Eiserloh: They're two and three-stories. They're all one-bedroom units.

Mr. Hedani: So to your knowledge. The Kihei Kai Nani is zoned Hotel?

Ms. Eiserloh: Yes, it was zoned Hotel at the time of construction.

Mr. Hedani: It is zoned Hotel today.

Ms. Eiserloh: Yes it is.

Mr. Hedani: Okay.

Ms. Eiserloh: However I should...I do wanna enter one correction. Barry mentioned that it was all vacation rentals. Actually we have quite a few that are being use as multi-family and long-term rental in the current project. There are also a number of people who are resident there. And many of the people who rent their units out do not rent them out on a year round basis.

They use their...many of them are retirees. They come and they spend the whole winter and then they may rent their places out at some other time. So they're not in a state of rental actually for many of them for much of the year, some not at all because they strictly keep them for their own use. They do not use them for vacation rentals.

Mr. Hedani: Right. So although your property is zoned Hotel, its use can be for residential purposes?

Ms. Eiserloh: That's correct. It is being used for that way and it's being used as multi-family as well, yes.

Chair Ball: Further questions? Seeing none, thank you.

Ms. Eiserloh: Thank you very much.

Chair Ball: Julie Steiner? How about Michael Steiner? No? Mark Jelsing?

Mr. Mark Jelsing: Hi, aloha Commission Members. I have serious safety issues.

Chair Ball: Can you identify yourself Mark?

Mr. Jelsing: I have serious issues about safety with this development and people have already testified about the incredible congestion. In the area we have hordes of pedestrians going by, bicycles whizzing by, runners and cars, no left-hand turn lane and if we're gonna add construction to this mix for two years, cement trucks, supply trucks, some 50 odd employees running through, driving through our driveway which is extremely narrow as people have already pointed out. I'm afraid for the safety of our residents, our guests and also adjoining condominiums in the area if this were allowed to happen, if this development were allowed to happen. So that's a issue of pedestrians and vehicle is one. And the other is the water issue. We've had several hundred-year floods, one in 2007, one in 2011. You can look them up on YouTube and it's a raging river that goes through our driveway. It's not just a simple smaller amounts of water draining through the driveway. It's two or three feet of a raging river and a renter of ours at the time was swept away. He made the mistake of wanting to cross our driveway during one of these flood events and he was swept away, but he was a...a bystander was there and was able to pull him out. But I'm afraid if we're...if this development is allowed to take place we're gonna have more water issues. I think the gulch needs to be kept as it is so it's not to exacerbate the problem. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing one, Commissioner Hedani?

Mr. Hedani: Hi.

Mr. Jelsing: Hi.

Mr. Hedani: I saw pictures I think that was presented earlier about the flooding that occurs in the parking lot for Kihei Kai Nani. From my perspective, the solution would have been to put drainage underground to make the parking lot. But at the time the project was built I guess a

decision was made to keep it surface probably for cost reasons. The question that I have is would Kihei Kai Nani be interested in participating in burying the drainage through your easement at this particular point in time to alleviate that problem?

Mr. Jelsing: I'm sorry, I couldn't speak to that. I'm not on the board of directors or have any authority at the complex. I've been an owner since 2002. I'm just afraid that these 100-year flood events are going to be much more frequent in the future due to climate change.

Mr. Hedani: Right, no I understand.

Mr. Jelsing: And it's a really, a big safety issue as far as—

Mr. Hedani: I agree, and that's why I'm saying would Kihei Kai Nani to me from my perspective it's a perfect time for Kihei Kai Nani to participate in burying the drainage underground so that you eliminate that hazard and you can use their property for parking while you're creating this drainage system and do it at the same time they put in their utilities so that the problem is solved permanently for Kihei Kai Nani. I understand, I understand your perspective. It's something that the board has not approved so...but I'm hoping that it's something that you folks would consider for the future.

Mr. Jelsing: Okay, thank you.

Chair Ball: Any further questions for the testifier? Thank you. Jeff Kern?

Mr. Jeff Kern: Can I leave...(inaudible)...in front of the podium and you know, if I pass out...(inaudible-not speaking into a mic)...

Chair Ball: Maybe Jordan can help you pass out the pictures and then you go to the podium.

Mr. Kern: Okay. Good morning, Commissioners. I'm Jeff Kern and I live at Kihei Kai Nani. I just wanna quickly go through some—

Mr. Higashi: Can you speak in the mic?

Mr. Kern: Yep. Wanna quickly go through some historical—

Chair Ball: Go ahead Jeff.

Mr. Kern: Okay what I have here is *Maui News* from 1982 where Kihei Road was completely...half the lanes were washed away and then it shows the beach, the primary dune and a secondary dune were washed away and then the County was working on it on the bottom picture. Okay, so what happened was after that episode the County built a wall right there so now the water comes down our driveway, hits the wall and goes south to the low point in the road and then it goes down and takes out the lifeguard shack and takes out the access path and stuff. Okay, and this was 2007, December.

So then...so this is 2011 now it happened at night so I couldn't get pictures but you can see the

debris level is the same as 2007 on a raised sidewalk portion of the wall that the County put in and then it went down the same spot but the County Parks moved the lifeguard slightly to the north so it didn't take out the lifeguard shack, it took out a bunch of sand, the irrigation lines and then the access path that the people use. It's a heavily used area for tourists. And so it's just the damage. Just wanna show the damage that's on Kam II all the time. And I work in a volunteer group, South Maui Volunteers and we clean up all that every time something happens like that, we go in there and we do it and we do the sand fencing and get it back up to snuff and everything else.

Okay, and so this just shows the, you know, major storm events, I probably missed a few, it's at least major, five major storm events in the last 36 years and all these haven't been the 360 cubic foot 100-year floods, they've been less than that but they made substantive damage and what I use for a gauge instead of 50-year or 100-year when it goes to that second level of that raised sidewalk that's a significant flooding storm and that's the one that our volunteer group works for months and years to recapture the beach damage. So I go that.

And then I got pictures here showing that the collector road that was just put in, okay they decided to put in a...one, 48-inch culvert, okay, and then they did a huge spillway. Okay this road dips down and comes back up and look at all the metal tubes they put here so cars don't go off of there. So the County road can't even handle the anticipated water and they're scared of it. Okay, and Nani Loa or you know, they can't take care it ...(inaudible)... and this is the picture of the lot, okay that's Lot 1A and what is this lot is, it's all kind of a gulch, it's real high by Kihei Ekahi. It's at least 15, 16 feet from the bottom of the ditch and on this side it looks like about 8 feet. So it's not as high as you think. So but I was wondering how high is that retaining wall gonna be at the ditch and across the south property line, I mean, the east property line. And this is the existing culvert on their side. You've never seen a picture of this and this was one the engineers just said they're gonna ...(inaudible)...unchanged, but the landscape plan show they have a parking area over this going at least 20 feet over this existing 7 by...7 ½ by 2 culvert, but this is their side that you haven't seen. And so you know, with all that being said like Barry was saying, you know, the best forward thinking approach would be is for the County, Public Work or whoever does it, buy the five-acre parcel and this 1.4 ...(inaudible)... and do a step retention basin or something like that. Nobody wants to...they admit the problem's there but you just wanna throw another ...(inaudible)... in it. Let's take care of the problem. Let's start doing a retention basin. Let's go upcountry see if we can do some. Nobody's entertaining that they're just saying oh let's just...our rules say it's okay so we gotta do it. Okay, that's the problem of 1970 nobody wanted to take the initiative, no wanted to look forward thinking on it.

Chair Ball: Thank you. Are there any questions for the testifier? Commissioner Hedani?

Mr. Hedani: Do you have any recommendations for solving the drainage problem?

Mr. Jelsing: Well, just what I said my recommendations would be for...and if the County was more forward thinking back when it was affordable bought the Lot 1A and bought the five-acre parcel behind it and that's a start of a retention basin, it could be a ...(inaudible)..., it could be just a big lagoon or whatever that could have been real cheap then and I'm sure both lots will be for sale now too. But something like that needs to be done because you know, in 1970 it wasn't required and there wasn't as many hired services either. You gotta be fair to developers of

Kihei Kai Nani, all the subdivisions weren't in, all the roads weren't in, just this collector road, all those hard surfaces on our lot, a big angle, I invite you guys to come over here and look at that, it goes down, it goes up, it's all hard surface now. And so that adds to it. It used to be dirt now it's hard surface so that adds to that point and then like I say the County got all those pipes in there so a car doesn't go off of there. And another thing I don't understand is how can the County road, I know it's existing that's coming in there and then you have the County road drainage from the road itself is all going 100 percent on private property out to the ocean and isn't there supposed to be a storm drain or something? Yeah, I don't understand how all the road stuff works, but you know, when they got that road done I was really curious to see what they were gonna do because like on the other one I showed you and like Hart showed you a little bit those are the drainage at Piilani Highway and the next road over and so I was really curious to see what the County was gonna do with the collector road. 'Cause the collector road is right...the collector road is right across here so all this is going right here. So I was dying to see what they did with it. So what they did was put one 48-inch culvert which the engineer can confirm, a 48-inch round culvert is about the same size as our 2 x 7 ½. It's about the same square foot. You know, I think it's a difference about one or two square foot difference. I think it's two square foot more than what we have. And so what they do, they had to anticipate the spillway on those other pictures that you have there so they made...so what they did is they put this 48-inch culvert in, they know it's gonna not handle it and they put it up about four feet where it has to fill up about four feet back up and so a little reservoir, small reservoir system to the subdivision and then it's gonna spill over it, okay. And they know it's gonna spill over, know it's gonna spill over hard as you can see all steel pipe barriers they put in there. And I don't know if a brand new road should have been put in that way or not, I don't know it's not my area of expertise but I was really curious to see if they were gonna put a double culvert you know as they've gone there. So I don't understand the whole thing and my answer to your question would be purchase those two lots. I mean, we buy Lipoa Point, we're looking at Jaws and this and that for people, well this is, this is something big too so let's put some money where our mouths is. Everybody thinks they wanna do the right thing but nobody's doing it.

Mr. Hedani: So your solution basically would be take the hotel property and turn it into a lagoon?

Mr. Jesling: Yeah, yeah. Well, a...you know, you're saying lagoon, but I don't know, I don't know all the different steps. There's other things than just a lagoon for drainage. I don't know all of that, you know, but something like that because the development's gonna be more hard surfaces.

Mr. Hedani: Thank you.

Mr. Jesling: Yeah, thanks.

Chair Ball: Commissioner Robinson? Jeff you have another question.

Mr. Robinson: I have a question.

Chair Ball: Jeff?

Mr. Robinson: Jeff was there any flooding from 1970 to 2000?

Mr. Jesling: Yeah, the pictures I showed you was 1982. In 1980 there was the—

Mr. Robinson: Okay. Is it your stance that Victory Development needs to take care of this drainage problem that the County of Maui needs to take care of this project? Does Kihei Kai Nani have any responsibility of helping their own, helping themselves take care of this problem?

Mr. Jesling: Sure everybody's got a responsibility in this and as far as you know, 1.4 acres all sort of caught into this thing and...(inaudible)...it had but my guess, my answer to that be is have them go put it on pilings and raise it up and let it spill over under them then they can say they're not involved in it all. You know have driveways on the extreme right and left and have the whole thing raised up and let the ditch flow like it does and they would kinda be out of the picture. But they do have some hard surfaces there and what they wanna contain plus the 20 percent like the engineer mentioned it doesn't amount to much.

Mr. Robinson: Well, it's, it's I'm—

Mr. Jesling: ...(inaudible)...answer.

Mr. Robinson: --yeah, I know. I'm trying to focus on the current problem. So there's a...I've heard three testifiers say that there's a safety concern at Kihei Kai Nani, people are being swept away, et cetera, et cetera, but but, so has there been anything with your board saying we need to do something now? Because whether Victory is there or not you're still gonna have a safe—

Mr. Jesling: Yes, there's been...I'm not on the board, there's been slight discussion at one time. ...(inaudible)...discuss maybe resloping the driveway and to look at expense of that. And the problem with putting it underground, you'd have to put two 8 x 5 or two 6 ½ diameter culverts in underground and I don't know if you're gonna get a permit to dump that out in the ocean or if we could dig up our driveway and put those in and where we're gonna go with it. I don't know how do you get approvals of that, I don't know how the state...

Mr. Robinson: You as a individual owner if that was a option would be favorable of that?

Mr. Jesling: Of trying to go underground with it?

Mr. Robinson: Yeah.

Mr. Jesling: I guess maybe if we could get the approval...if you could get the discharge approvals out to the ocean and I don't know how everybody screen that.

Mr. Robinson: Thank you.

Chair Ball: Any further questions for the testifier? Seeing none, thank you. Trying to get the people that are on this item. Ethel Belway?

Ms. Ethel Belway: My name is Ethel Belway and I have been owner at...of a condo at Kihei Kai

Nani for 35 years. In those early years we did not have a three-foot thick wide cement wall directly across the road from Kihei Kai Nani driveway built to block the rain and runoff. Before the wall was constructed the County was considering a low cinder block wall to be continued along the road line to divert storm water into the drainage creeks to protect the beach from being damaged. The next couple of rain storms proved that this low cinder block wall was not enough to stop the water and a large cement wall was built by the County. I have experience two rain storms that damage Kamaole Beach II before the wall was built. During 1983 a group of volunteers and condo owners in the area formed the group to save the beach after the big storms. We erected sand fences with permission from the County to promote sand dune formations. Other actions were considered to slow the damage from the rain storms and the runoff from our Kihei Kai Nani driveway which is the end of the gulch. In 1980 and 82 Kamaole Beach II had a parking lot. The pictures are in my letter. After the storm damaged the parking lot several times the County took steps to protect the park. They determined that removing the parking lot and planting the area with grass and palm trees would slow the rain runoff from large paved areas such as the Kihei Kai Nani and Kihei Ekahi driveways. Beach parking was just provided on the roadside fronting Kamaole Beach II. In a letter of October 23, 2014...2015 Chris Hart & Partners stated that with the high level of traffic passing through this intersection it is understandable that left turns are difficult. Victory Development is agreeable to restriping South Kihei Road to provide a left-turn storage lane in to the Kihei Kai Nani driveway if it is proved by the County. Yesterday I counted the parking spaces provided for parking at Kamaole Beach II there are 23 spaces. Directly across from Kihei Kai Nani driveway a blinking pedestrian crossing was installed and the area around it is marked off taking up about two parking spaces, and a driveway exit from Hale Pau Hana is just north of the crossing. These two items illustrate that the width of the road at the entrance of Kihei Kai Nani does not leave any space to put in a left-turn lane as Victory Development is agreeing to. Widening the road in this area would be almost impossible cause one side is the entrance to Kihei Kai Nani drive and the other side is the big, thick cement wall that cannot be removed. It shows how congested this area really is. Since parking in the area is limited many questions must be considered. Where would the construction workers park? Would they take up the beach parking spaces? If they did, where would the beach parking be? Would they park in all of the shopping centers parking lots surrounding the area? Where would the owners of Kihei Kai Nani park during the time the driveway is turned up installing water and sewer and utility lines. And if they did put a turn lane in there it would take away lot of the parking spaces for the beach. Thank you.

Chair Ball: Any questions for the testifier? Seeing none, thank you. Sorry, I skipped Joseph Henchel? No, I didn't? Mike Moran?

Mr. Mike Moran: Okay, I had to check the clock. It's still good morning. Good morning Chair Ball and Commissioners. Again, Commissioners I often say this but there's a lot of new folks here today. We appreciate you guys working as volunteers unpaid and as our Kihei gentleman mentioned one time all we get out of this is a free lunch. I never worked so hard for a free lunch. So we certainly appreciate your efforts.

Mr. Walker has been forthcoming with KCA for years and we have positive comments about prior projects in Kihei, but we are unable to past this Nani Loa one. When we examined the EA last November noting claim of no impact on the ocean because the project is uphill 1,000 feet seemed to defy the laws of gravity, but today we are onto the SMA and the amendment to the

Kihei-Makena Community Plan. But now we are more confused as we read the project is a half-mile, no 1,000 feet, no 1,200 feet from the ocean. With due respect it seems they are not where the project is or where the ocean is, but wherever they are no impact on makai, this is an unreasonable conclusion.

We had testified previously further claiming that the project will not impact traffic because it's already an F-rated intersection without the project seems absurd. So if it's already a failure adding even more vehicles does not make it even worse as we stated then if you're backed up on the street as the 10th car in line awaiting to proceed onto South Kihei Road is it not a greater impact if you were the 15th or the 20th. Is this asking the traffic engineers to create a worse rating than F? But today we note that the rating has improved and we're not sure why. What changed that it went from an F to I think it was a C?

Request to change the Kihei-Makena Community Plan from Multi-Family to Hotel changing the community plan goes against the KCA's effort to have the Kihei-Makena Community Plan prevail over zoning. It was our understanding that the Commission is to be guided by following the community plan. How can the Commission be expected to do this if one just bypasses or changes the plan. Are you expected to make just capricious decisions?

You heard and saw examples in prior testimony on the same project at meetings last year regarding impacts of building, flooding, ocean degradation, traffic, et cetera. All this remains, nothing has changed. Some of the testimony is being repeated today. Commissioners do we need more high-end residential projects in South Kihei? I thought we were looking for residential projects or residences not those our residents can't afford just bringing in more people with wealth, with more cars added to traffic from outside Maui and having less development for those living here. And we would also hope—

Ms. Takayama-Corden: Three minutes.

Mr. Moran: --we can ask if we would hope that as Corp. Counsel explained for the benefit of all that they were taking testimony today on the SMA, but no decisions will be made and we would hope that the public would be able to clarify whether they would be allowed future testimony on the SMA if this comes back to your Commission. Thank you very much.

Chair Ball: Thank you. Any questions for the testifier? And yes, you will be able to testify again when the SMA comes back to the Commission.

Mr. Moran: Terrific. Thank you for clarifying that. We get asked that question several times and now I have an answer. Thank you.

Chair Ball: Yeah, and just for clarification anything that comes here we open it up for public testimony so...

Mr. Moran: Thank you.

Chair Ball: Thank you, Mike. Next is...James Magliozzi? Melissa Crawley. Don and Debbie Perry? Tom and Linda Doll? Would anyone else like to testify at this time? Please come

forward. Seeing...maybe someone outside?

Unidentified Speaker: Nobody wants to.

Chair Ball: Oh, thank you. Okay, public testimony is now closed. We will move to the recommendation from Mr. Fasi.

Mr. Fasi: Thank you, Chair. The Planning Department recommends to the Maui Planning Commission that it recommend approval to the Maui County Council on the community plan amendment from Multi-Family to Hotel. It is subject to two conditions and it is in my recommendation on Page 3. The Department also recommends that the Commission defer the matter on the SMA until the appropriate time. Thank you.

Chair Ball: Okay. At this time, we are going to address D-1, the Communication as it is related to C-1 Item. So if we could get the Director announce D-1?

Mr. Spence: So Commissioners, Item D-1 is a Communication item. We have a Petition to Intervene on the SMA Permit application. Mr. Tom Pierce and Mr. Peter N. Martin, attorneys for the Association of Apartment Owners of Kihei Kai Nani, Phase One, Inc., submitting a Petition to Intervene and a Request for Stay of Contested Case Proceeding date February 9, 2016 on the applications by Victory Development for the community plan amendment from Multi-Family to Hotel and the SMA Permit.

Chair Ball: Corporation Counsel?

Mr. Murai: Jordan, is Mr. Nakamura gonna be appearing for the Motion to Intervene.

Ms. Arsima Muller: No, Arsima Muller.

Mr. Murai: Oh okay, okay so you'll be appearing on behalf of your client?

Ms. Muller: Yes.

Mr. Murai: Okay. Commissioners, what we're doing is because we have a Motion to Intervene pending so prior to entering into any decision making regarding the public hearing matter and the only thing we'll be ruling on is the request for a community plan amendment. I recommend that we hear the Motion to Intervene first.

Now as was mentioned earlier, there is, there is...well, why don't we hear...Mr. Chair, I recommend that we hear the party or the intervenors and the applicant's positions regarding the Motion to Intervene with regard to the community plan amendment.

Chair Ball: Okay, so we'll move to Item D-1, and if the petitioner would like to come forward?

Mr. Murai: Actually we'll hear from the intervenor first.

Chair Ball: Oh sorry. The intervenor would like to come forward?

D. COMMUNICATIONS

- 1. MR. TOM PIERCE and MR. PETER N. MARTIN (of counsel), attorneys for the ASSOCIATION OF APARTMENT OWNERS OF KIHEI KAI-NANI, PHASE ONE, INC., submitting a Petition to Intervene and Request for Stay of Contested Case Proceeding dated February 9, 2016 on the applications by VICTORY DEVELOPMENT for a Community Plan Amendment from Multi-Family to Hotel and a Special Management Area Use Permit for the Nani Loa Condominium Hotel project, a 39-unit hotel condominium project and related improvements on approximately 1.438 acres of land at TMK: 3-9-020: 032, Kihei, Island of Maui. (CPA 2015/0002) (SM1 2015/0004) (P. Fasi)**

Mr. Tom Pierce: Good morning, Mr. Chair. Tom Piece, I'm here on behalf of the Kihei Kai Nani Association. And as I understand it what we'd like to do right now, and I think it's fine is just to take the separate or the more narrow issue which is to our request to intervene on the community plan amendment. Is that how the Council or the Commission would like to deal with it? That's fine with me if that's how?

Chair Ball: Corporation Counsel?

Mr. Murai: Mr. Piece, you know, what the...I believe what the Commission is intending to do is they're treating the community plan amendment request as a separate matter although, you know, although the public hearing lumps the two together. So I guess what, what we'd like to hear is it's the commission's belief that because the community plan amendment we're not the final arbiter of that. You know, that's for the Council. And therefore, this is...this portion is not a contested case hearing and therefore there is no right to intervene. What I think the Commission may decide to do is defer...well, you know, rule on your motion to intervene with regard to the community plan amendment with the understanding that it's the commission's belief that there is no a right to intervene at this stage.

Mr. Pierce: Sure.

Mr. Murai: However, should the Council act on it and send it back to us at that point the request for an SMA Use Permit becomes ripe and I believe what the Commission may decide to do is to continue your motion with regard to the Motion to Intervene...well, to deny your Motion to Intervene with regard to the community plan amendment but to defer or continue your motion to intervene in the SMA Use Permit application until that matter becomes ripe, you know, until it becomes up, it's properly before the Commission.

Mr. Pierce: Okay, I think I understand that. I also have a Motion for a Stay pending but for the sake of keeping things simple I'm ready to address the issue of the community plan amendment, our Petition to Intervene on that. And if you'd like we can try to get it, I don't know if the Commission wants to try to get that in before lunch but I'm happy to give it a 10-minute shot.

Mr. Murai: Let me mention, I glad you mentioned the Motion to Stay. You know, my take on it

is that based on what the Commission intends to do in effect you do, you know, because we're not taking it up on the...we're not taking up the SMA today, in effect you do kinda get a stay.

Mr. Pierce: Well, then what I would ask is for three minutes to testify on behalf of Kihei Kai Nani as to why the Commission on their own volition would want a stay.

Mr. Murai: That's fine, well up to the Chair.

Mr. Pierce: But to keep things clear once again, I'm happy to begin with the Petition to Intervene with respect to the community plan amendment.

Mr. Murai: Sure, please.

Mr. Pierce: And then, Mr. Chair if I may I'd just like to hook up my computer just to assist the Commission with a couple of points on that one? It will just take a second.

Chair Ball: We will break at noon just to let everybody know till 1:00, be 1:08 now.

Unidentified Speaker: Today?

Chair Ball: Today not tonight.

Mr. Pierce: Okay, Mr. Chair I'm ready.

Chair Ball: Okay, let's have order again. Go ahead.

Mr. Pierce: Commissioners, thank you and once again, I appreciate what Mike Moran what said, we appreciate you all taking the time to consider our petition and we understand and recognize that you all are volunteering volunteering your time on this. As was mentioned before I do represent Kihei Kai Nani Association. I would contend that the issue with respect to the community is somewhat of a novel issue. The position that's been presented by Victory Development and apparently I think this is Corp. Counsel's opinion as well is that there's no final decision here. But the law actually says something a little different and this is a recent case, a 2010 case called Kaleikini v. Theilen and in that case the Supreme Court talked about what a final decision is and this is also referring back to the PASH case which many of you may be aware of which was another very important intervention case over on the Big Island.

It says, the second point in the PASH requirements calls for an examination whether the agency's action represents a final decision and order. That's what the standard one that we're all familiar with or a preliminary ruling such that deferral of review would deprive the claimant of adequate relief. So the question is in this instance, would your recommendation...the point here is, and we recognize this is that all you're doing today and I shouldn't say all you're doing what you're doing is actually a very significant thing, you're making a recommendation to County Council and we gotta believe that the reason that rules got written the way they are and the ordinance got written the way it was that the County Council anticipated that you all have

certain abilities to dig into the issues in a way that the County Council might not be and that you have developed a certain level of experience and understanding of these issues. So we think that the opportunity to, and I apologize for this, now I'm back up on the screen, the opportunity for you to hear this as a contested case may make a difference and I'll explain why.

The rule that is applicable here is Maui County Code, 19.510.20(A)(7), it says the Commission shall transmit to the County Council...it doesn't just say a recommendation. It says, findings, conclusions and recommendations for...and then it goes onto say essentially among other things zoning and things like that, but also community plan amendments and it sets a time frame for when you have to do it. But findings and conclusions we contend is the same as findings of fact and conclusions of law that you're being asked to do that. And what I would point out Commissioners as far as your decision making today is to ask what is it that...the question is, one of the reasons that a contested case is so valuable to a commission is it provides an opportunity for you to get a chance to really dig into the facts and understand them. So let's talk about if you were gonna make your decision today what has been presented to you actually that's substantive? And I went through and poured through the Environmental Assessment as well as through the Planning Director's report that he's presented to you today and what you find is on Page 16 of the Planning Director's report is this one paragraph that says, that...it's located within an area that's been zoned Hotel, we all understand that. The community plan is Multi-Family and then it just says existing land development in the area largely reflects this settlement path in the context of the Kihei-Makena Community Plan and a community plan amendment from Multi-Family to Hotel is consistent with existing land use patterns in the area. Well, that's what we would call a conclusory statement. There's nothing supporting it in terms of the facts. You haven't been presented today with any kind of information identifying how and why this got changed from community plan...in the community plan, the Kihei-Makena Community Plan from Hotel to Multi-Family. But I think it's very important to point out not only was that a community process where there was live deliberations that took place in the Kihei-Makena area but then it did go to the County Council and obtained County Council approval. So that's an ordinance just like zoning. It has...in fact, the Supreme Court and the Appellate Courts in two separate recent cases have dealt with the Kihei-Makena Community Plan specifically in cases that have come up here from Maui. One of them was the GATRI case, and the other one was the Leone case. And in both of those cases the Appellant Court said that the Kihei-Makena Community Plans specifically that one has the force and effect of law. That means that it's not just another document. It's not just a document that is supposed to be we aspire to it the force and effect of law. They were very clear. Those were exactly the words that they used. So the question is what do you have before you to make your decision or your recommendation to the County Council which we contend is a very important decision and one that actually the contested case process could assist with. So you have the planning Director's report, you have one paragraph from the Planning Director in terms of why you should do it and it's conclusory it doesn't have any background.

The EA doesn't give much more. One of the things it talks about is, it says, well and we heard it today from the Victory folks, they said well, we're gonna be required to deal with workforce housing. But I won't claim to fully understand the workforce housing ordinance right now, but what I will say is that there's a difference between 25 percent which I think is gonna be the

requirement that they provide somehow either in terms of in-kind multi-family or through, through financial payments for that to be done somewhere else. There's a difference between 25 percent and 100 percent and that's something that the Commission might want to dig into and that's the kind of thing that happens in a contested case process is that we'd have an opportunity to ask questions, get the right people in here and hear what would be the difference to Kihei and to the folks who live in Kihei whether they be travelers coming to Kihei or whether it be the residents. And once again, there's a fair opportunity here for Victory to make their case as well as well as for Kihei Kai Nani. But what is the real understanding of why multi-family was what the community plan...excuse me, what the community said in the ...(inaudible)...and the community groups that made that recommendation and why the County Council actually approved. So the workforce housing is one of the main issues that's talked about in the EA on Page 16, and that would be that part.

Let me just look at my notes Commissioners for one moment please. The other thing I would just mention is that the rules permit an applicant to file concurrently. But that is not necessarily how it has to be. In other words, the other way that Victory could have done this is they could have submitted for a community plan amendment first. So we would contend that based upon the language that I provided to you earlier identifying what the Supreme Court has said is a final decision which is either a final decision or preliminary rules such that deferral, a review would deprive the claimant of adequate relief. And when we look at the Maui County Code section that's related to it which identifies that the Commission is not just making a recommendation it's making findings and conclusions we would contend here today that we're entitled to intervene in this part and have a contested case on the community plan amendment.

So Mr. Chair, I'll leave the rest of my arguments for the second...for other parts. I would like to come back and testify on behalf of Kihei Kai Nani respect to the stay, but I think unless you would like me to do that right now, Mr. Chair, I'll keep that separate. But I would like to reserve those three minutes to do that please?

Chair Ball: Let's keep that separate. At this time, we will break for lunch and we will reconvene at 1 o'clock.

A recess was called at 12:00 p.m., and the meeting was reconvened at 12:03 p.m.

Chair Ball: Okay, we'll call this meeting back to order. Welcome back everyone. We will now hear from the other side on the Petition to Intervene.

Ms. Arsima Muller: Good afternoon Commissioners my name is Arsima Muller with Carlsmith Ball representing the applicant, Victory Development. On February 17th Victory Development filed a Motion to Dismiss the Petition to Intervene. And as set out in that motion one of the basis for that was because just on the CPA alone they're...petitioners are not entitled to a contested case. This is as Corp. Counsel explained not a final decision by the Commission. And as I understood Mr. Pierce's arguments this morning he's not arguing that it is a final decision. He's arguing that it is a preliminary ruling such a deferral of review would deprive the claimant of adequate relief. And he cites the Kaleikini v. Theilen for that. The Kaleikini only refers back to

PASH and if you look at PASH which is 79 Hawaii 425, the Supreme Court held that a preliminary ruling is one that ended the proceeding because there's no, no other avenues for the applicant. And in this case that's clearly...it's clearly not the case. After the Commission makes a recommendation it will go to the County Council. And if you look at Maui County Code 19.510.020, Subsection (A)(6)(a) it says that for all actions requiring final action by the Council, by the County Council the commission will make a recommendation. So it's clearly contemplated it's the County Council that will make a final determination not the commission.

Mr. Pierce also states that the commission's recommendation is effectively a findings of fact, conclusions of law. Well, the regulations state that you have to make findings and conclusions, but it also states that you make a recommendation. It doesn't say that you make a final order. It's the County Council that makes the final order and on that basis we don't believe that the petitioners are entitled to intervene just on the issue of CPA which is what we're addressing today. Thank you.

Chair Ball: Thank you. Corporation Counsel? Can you advise us on our options?

Mr. Murai: Mr. Chair, I'm not sure whether the Commission has had...heard enough from the parties that they're ready to deliberate on the motion. And if the Commission is ready then I suppose the Chair can solicit, solicit a motion.

Chair Ball: Is the Commission...does the Commission have any questions at this time? Commissioner Robinson?

Mr. Robinson: Are we able to commission the attorneys?

Mr. Murai: We ask the attorneys, sure.

Chair Ball: Who do you want to talk to?

Mr. Robinson: To Victory's attorney please.

Chair Ball: Arsima.

Ms. Muller: Yes?

Mr. Robinson: Aloha, thank you. In a synopsis can you explain to me the hardship that would be if we were to allow them to intervene at this junction instead of later on?

Ms. Muller: Well, it would be duplicative because they are –

Chair Ball: Arsima identify yourself for the record?

Ms. Muller: I'm sorry. Arsima Muller again for Victory Development. It would be duplicative because the...sorry, the Maui County Code provides procedures for after this Commission

makes a recommendation. It then goes to County Council which then allows for protest. So we would then have a public hearing here and then again at the County Council. And again, when we have the SMA that would be another hearing if the commission decides to grant their petition. So we're looking at three opportunities for a hearing which they're not entitled to.

Mr. Robinson: Thank you.

Chair Ball: Any other questions? So I think what we're trying to get at we're only discussing the community plan amendment because the special use permit we're not even gonna deal with. So we would...do we have to take action on that as far as deferring that to another date, I mean, the Special Management Area Permit?

Mr. Spence: Yes.

Chair Ball: Okay, so we'd look at probably deferring the Special Management Use Area Permit until such time where it becomes relevant to us which would be after the Council decides on the community plan amendment. So if there's a motion to defer that?

Mr. Lay: Motion to defer.

Mr. Medeiros: Second.

Chair Ball: Motion by Commissioner Lay, second by Mr. Medeiros. Discussion? Commissioner Hedani?

Mr. Hedani: This is to defer the SMA?

Chair Ball: Special Management Area, yes. Further discussion? Seeing none, all in favor of the motion raise your hand and say, "aye"?

Commission Members: Aye.

Mr. Spence: That's eight ayes.

Chair Ball: Motion carried.

It was moved by Mr. Lay, seconded by Mr. Medeiros, then

**VOTED: To Defer Action on the Special Management Area Use Permit Portion
of the Petition to Intervene.
(Assenting - I. Lay, J. Medeiros, L. Hudson, M. Tsai, W. Hedani,
S. Duvauchelle, K. Robinson, R. Higashi)**

Chair Ball: Okay, now we'll move onto the community plan amendment. Corporation Counsel?

Mr. Murai: Chair, may I suggest that we, the Commission address the motion that's before it which would be the Motion to Intervene. Having deferred on the SMA portion, I would also, I would then recommend that the Commission consider whether to allow intervention in the community plan amendment portion of the public hearing and deliberation and whether to address today or defer until the SMA comes back up the Motion to Intervene in that matter. In other words, we're treating the Motion to Intervene as almost like two motions for separate issues. And then there's also the matter of a stay of the proceedings requested by the movants and I believe Mr. Pierce did reserve...Mr. Pierce is here? Oh yeah, you did reserve some time to address the Motion to Stay is that correct?

Mr. Pierce: That's correct. I'd just like to essentially—

Chair Ball: Hold on, can you come to the podium please and identify yourself?

Mr. Pierce: Hi, Mr. Chair. Tom Pierce on behalf of Kihei Kai Nani. With respect to the Environmental Assessment it's my understanding if I understand the procedural state that we're at it's the Commission's position that that is not ripe for review because we're not yet intervenors. If that is the case what I would like to at least do is testify on behalf of Kihei Kai Nani just as a public testimony part on their behalf as to the reasons why I think the Commission may want to wait until the Environmental Assessment challenge is being heard which is at the Circuit Court level and I can explain that later. But did I answer the question there Mr. Chair?

Chair Ball: Yes, Yes, you did.

Mr. Murai: I don't know if Ms. Arsima do you have any response or would you like to respond?

Ms. Muller: If understood Mr. Piece correctly, sorry this is Arsima Muller again, if I understood Mr. Pierce correctly if the Commission is going to defer then he's not going to raise the motion to stay in which case he's just going to testify as public testimony. That's my understanding. If he's not going to argue the Motion to Stay then we don't need to address it from our point of view.

Mr. Tom Pierce: This is Tom Pierce again on behalf of Kihei Kai Nani. Let me just add one thing here perhaps it would be helpful either from Corp. Counsel or from the Commission to understand the Commission's position with respect to the Motion for the Stay because it is separate from the Petition to Intervene.

And then because I was basically making an assumption I had thought I'd heard before that the Commission was already inclined to not address the Motion to Stay based upon the deferral of the Petition to Intervene. That's how I was understanding it, but I may have that wrong. So it might be helpful for the parties to hear a clarification on that from the Commission.

Chair Ball: Corporation Counsel.

Mr. Murai: Mr. Pierce, actually you know, your ...(inaudible)... is correct. It was the...it was my

understanding of the Commission's intention to defer the Motion to Stay as well. I just remembered that you wanted to say a few words about it and although you had count it as public testimony I had interpreted it as maybe as arguing for or against the stay.

Mr. Pierce: Sure, and I guess that's correct. That's what it would be. It just wouldn't be procedurally...It might be procedurally a little bit different from your perspective. So that's fine. Either way, I would just like to have that opportunity.

Mr. Murai: So we just...I just wanted to make sure you had the opportunity to argue that part of your motion and are you for or against the Commission's inclination or consideration of continuing the, you know, that part of your motion that relates to the stay? And I'm not sure whether the Commissioners had any questions about that for counsel, but...

Chair Ball: I don't even know what the hell we're talking about at this point. Commissioner Robinson?

Mr. Robinson: Yeah, if we can get back on track on...

Chair Ball: Thank you. Go ahead.

Mr. Robinson: So on D-1 did we not just defer D-1?

Chair Ball: Only the Special Management Area.

Mr. Robinson: Only half of it?

Chair Ball: Yeah.

Mr. Murai: For sake of clarity—

Chair Ball: Corporation Counsel?

Mr. Murai: --and to make sure we have a good record, I stand to be corrected if I'm wrong, but when we voted to defer, I thought we were voting to defer action on the SMA Permit portion and if that is the case, we would also be deferring by separate motion consideration of the Motion to Intervene. In other words, because we, the Commissioners already voted to defer on the SMA Permit application the Commission may then consider whether to...when the Commission decides on the Motion to Intervene as I suggested treat those as two separate motions almost. Did answer your question, Commissioner? So again, I'm sorry, so we have not as far as I'm concerned, and like I say, I could be...stand to be corrected, we have not yet...the Commission has not yet decided on the Motion to Intervene yet.

Chair Ball: On the community plan amendment.

Mr. Murai: On the community plan amendment. However, the Commission has as far as I

understand voted to defer the SMA Permit portion of it because it's not ...(inaudible)...

Chair Ball: Okay, so we're going back to community plan amendment. Can we defer that also or we have to either deny intervention or what?

Mr. Robinson: No, no we have to—

Mr. Murai: I would recommend that the Commission first before it decides on the community plan amendment rule on the Motion to Intervene as it relates to the community plan amendment.

Mr. Lay: Okay, make a motion?

Chair Ball: Commissioner Lay?

Mr. Lay: I make the motion to defer the intervention until after we get the SMA to come back before us.

Mr. Hedani: Second.

Chair Ball: Second by Commissioner Hedani. Discussion? That's not what you were recommending though? What you were recommending is for us to either approve or deny intervention.

Mr. Murai: Well, I certainly don't intend to pretend to tell the Commissioners what to decide.

Mr. Robinson: What's our options?

Mr. Murai: Your options would be to—

Chair Ball: Okay for argument sake here let's thumb it down and let's say we say we're gonna deny the intervention on the community plan amendment what happens?

Mr. Hedani: Then it's denied.

Mr. Murai: Then it's denied and then the intervenors would lack standing to participate as a party in the community plan amendment portion of it.

Chair Ball: Okay, and then on the opposite side we say, okay, we're gonna, we're gonna allow this Petition to Intervene then what happens?

Mr. Murai: Then they would become parties to the action.

Chair Ball: Okay, and then what happens with that? ...(inaudible)...different meeting and we go today, what's the result of that?

Ms. Muller: Commissioners might I add my two cents?

Chair Ball: Hold on. No. Corporation Counsel?

Mr. Murai: Well, it depends on...assuming you granted the Motion to Intervene it would depend on what the intervenors wanted to do. You could simply...you could proceed with your deliberation unless absent some requests from the intervenors.

Chair Ball: Commissioner Hudson?

Mr. Hudson: I'm a little confused. We understand that the SMA thing is already done so we put that on the side. The next question is whether we grant the Petition to Intervene on the community plan amendment. But the community plan amendment isn't done yet, right? I mean still it has to go in front of County Council? So how could we—

Chair Ball: ...(inaudible)...

Mr. Hudson: How could we approve this?

Mr. Murai: Approve what, the intervention?

Mr. Hudson: The intervention?

Mr. Murai: Well, maybe I should defer to Mr. Pierce, 'cause I...I'm not...I don't want to argue one side's position or the other and also Ms. Arsima. Counsel you understand the question that is before?

Mr. Pierce: Yes. Tom Pierce on behalf of Kihei Kai Nani. So the...if the Commission granted intervention today, then we would go into what the rules permit which will be the contested case process which would mean that you at that point decide whether you're gonna hire a hearings officer or appoint a hearing officer or be the hearing officer yourself and then we would set a schedule for deliberation of facts, where the opportunity for there to be facts presented. So what would happen during that process is we'd have an opportunity to question some of the consultants that Victory hired and we would also have an opportunity to present some of our own consultants or experts with respect to those issues and then a final decision would be made. So that's what the contested case process would do and I would just point out that what the County Council is gonna do when they go up, Victory's counsel is correct it will mean that there will be another public hearing but it will not be a contested case opportunity. If we were to get a contested case opportunity this is our one shot at it. Once the County Council makes a decision it's gonna be as Ms. Muller pointed out it's gonna be a final decision and that's a legislative act at that point in time. We agree with that. There will be nothing else for anyone to decide with respect to that. That will be the final decision on that and we're not disputing that part. Hopefully that was helpful.

Chair Ball: You do have another opportunity during the Special Management Area Use Permit part of that.

Mr. Pierce: That's right. We just will not...you know, the point that we would make out to the Commission is that once this land is if in fact it goes from Multi-Family to H-2, to Hotel there will not be another opportunity to talk about that. So for example one of the things that we would get into if we were doing this is what are the chances for example that the Victory actually after they obtained the community plan amendment they actually sell the property and who would the next owner be and would the next owner be able to come in with a more intensive use than is being proposed today and we think the answer is yes, they would be able to. So we see a lot of significant impacts with that and as we said, we don't think that there's been enough that's been presented to the Commission in terms of why a community plan amendment is warranted in this situation. So that's what we would get into in the contested case proceedings. Thank you.

Chair Ball: Arsima you want...

Ms. Muller: Yes. Arsima Muller for Victory Development. I think, I mean, Mr. Pierce went into the we'ds, but before that you have to make the preliminary decision. For today's purposes we treated the petition to intervene as two petitions to intervene. The Petition to Intervene on the CPA and a Petition to Intervene on the SMA. We only addressed the Petition to Intervene CPA. That is because the Commission already deferred on any action on the SMA. So before we go through all that process and Mr. Pierce just outlined we still have to determine whether or not there is a right to intervene in the CPA. And since Mr. Pierce raised additional arguments I would like to point out that the County Code actually provide for protests and there is a right to appeal. So Mr. Pierce's statements that there is no other avenue for them after the Council makes a final determination is simply not correct. All right, thank you.

Chair Ball: Thanks. Commissioner Robinson?

Mr. Robinson: We had a intervenor a while ago at the homeless camp in Lahaina and the argument there was the party that wanted to intervene had some special rights or some special...they were more, they were more important than the rest of the public. Their interest was tightly, was more tightly modified than their neighbors. And I think that's where we're at now. We're not at the SMA part where the effect is. We're talking about the, about the classification of the land and does the Kai Nani people have stronger feelings than the other 10 testifiers that we have here. And this is still gonna go before the Council and like you said, this is, you know, this is...I don't think this is how the process that we want it to be, I think...I don't think there needs to be intervention at this point. I think intervention at the SMA is a proper time. I think you know, you want to intervene at every single aspect, but I don't think...to me, I don't think that they're special. I think this is a bigger topic, a bigger issue for the whole neighborhood and it's not just their develop...Kai Nani owners that are petition to intervene. I don't think this is the right location for them.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: Let's just cut to the chase. I'd like to make a motion to deny.

Chair Ball: We have a motion to defer actually so...

Mr. Medeiros: No...

Chair Ball: We have a motion to defer intervention first right now on the table. So we have to vote on that first if we're ready for that. Corporation Counsel?

Mr. Murai: I'm sorry Mr. Chair, which motion is pending? Motion to defer?

Chair Ball: Motion to defer, CPA.

Unidentified speaker: No.

Chair Ball: Yeah.

Chair Ball: Commissioner Lay and Commissioner Hedani.

Mr. Robinson: Ivan would you like to withdraw your motion?

Mr. Lay: What would be the actions of this followings what would happen then?

Mr. Murai: Well, I would recommend that the board deal with the Motion to Intervene first, and then...so in other words, it's up to you, the movant and whoever second whether to withdraw your motion, but I think procedurally it's probably more appropriate that you decide hearing the Motion to Intervene then take action on whether it's to approve, deny or defer to dispose of the community plan amendment portion after you deal with the intervention.

Mr. Hedani: This is getting more confusing.

Vice-Chair Tsai: Chair...I think we have a motion on the floor right now and we're in discussion. I say we vote on the motion that's currently which is for deferring and then if it doesn't pass we can always have a new motion, well, not always that's what we're supposed to do, so...

Chair Ball: Commissioner Hedani?

Mr. Hedani: Mr. Chairman, if the maker of the motion consents, you know, I would move to withdraw my second.

Chair Ball: Is there a withdrawal from the maker of the motion?

Mr. Lay: A motion to withdraw my motion.

Chair Ball: And seconder agrees to withdraw. No, I'm not making motion; I'm just asking the

two that made the motion and seconder.

Mr. Hedani: Yes.

Chair Ball: Okay, motion's off the table. Do we have a new motion?

Mr. Medeiros: Yes.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I move to deny intervention.

Chair Ball: There's a motion by Commissioner Medeiros to deny intervention.

Mr. Spence: On?

Chair Ball: On community plan amendment.

Mr. Hedani: Second.

Chair Ball: Second by Commissioner Hedani. Further discussion? Commissioner Robinson?

Mr. Robinson: I think this is the right course. We still have time to let them intervene at the SMA portion. I think this gets the...you know, they still have a lotta time to testify in front of the Council. So it's not like they don't have any say. They can still go ahead and still...

Chair Ball: And here, it's gonna come back here again.

Mr. Robinson: No, but I'm saying before it comes in an SMA they still can present their case at the Council prior to this.

Chair Ball: Director?

Mr. Spence: I would also point out Commissioners that since there's two applications. If you were to...if they were to intervene on the community plan amendment then they would go down that course, and when the SMA comes around again, they could intervene on that as well. So there would be multiple bites at the apple, you know, it becomes overly burdensome and time consuming at that point.

Chair Ball: Commissioner Hedani?

Mr. Hedani: From my perspective I think that the Commission is basically just making a recommendation to the County Council on the community plan amendment. From my perspective I don't wanna go down a whole new road of creating an entirely new procedure for community plan amendments, you know, that hasn't been preceded by other cases. So from

my perspective I'm here to vote at this point, you know, on the motion to deny. And since the proposed intervenors are so apt and good at appealing to the Circuit Courts I'm sure they'll have additional recourse if they don't agree with us.

Chair Ball: Okay, further comments? All in favor of the motion raise your hand and say, "aye"?

Mr. Spence: That's eight ayes.

Chair Ball: Motion to deny is carried.

It was moved by Mr. Medeiros, seconded by Mr. Hedani, then

**VOTED: To Deny the Petition to Intervene on the Community Plan Amendment.
(Assenting - J. Medeiros, W. Hedani, I. Lay, L. Hudson, K. Robinson, M. Tsai, S. Duvauchelle, R. Higashi)**

Chair Ball: Okay, let's go back to Item 1. Commissioner Tsai?

Vice-Chair Tsai: ...(inaudible)...have question.

Chair Ball: Mr. Paul Fasi. Okay, so we're gonna go back to Item 1, Victory Development, and we have further questions for Victory Development also. We're continuing your hearing. Paul? Question for Staff on the hearing? Sorry, 'cause we went from C-1 to D-1 and now we're back to C-1.

Mr. Tom Pierce: Sorry Mr. Chair, Tom Pierce. I just wanted to ask that when...when you would think it most appropriate for me to do that three minutes of testimony on the...(inaudible)...

Chair Ball: We have the public testimony closed so there's...there's no new items I mean, I don't see what the point of that, but the problem is do we have to reopen now public testimony?

Mr. Murai: Tom, correct me if I'm wrong, but I thought you were when you were reserving three minutes I thought you were speaking to the motion...the portion of your motion relating to a stay?

Mr. Pierce: The stay of...that's correct, the stay of the any decisions pending, pending the Environmental Assessment which is currently being challenged.

Mr. Murai: And it's my understanding that that motion has been continued along with the motion to intervene in the SMA portion.

Mr. Pierce: I see, so...okay, that's fair enough. I think that will work under the circumstances. I guess, you know, we would, we would argue that the community plan amendment Mr. Chair, the only thing it's resting upon is the environmental assessment. So the Commission is gonna be

making a decision on a, on a environmental assessment that may in fact be found to be faulty or the findings of significant impact that were resulted from that may be found otherwise. That was the reason for suggesting the stay is that we are challenging that in Circuit Court. And if the Circuit Court rules in our favor on that we would have been making a decision on an environmental assessment which is the only thing that the community plan amendment is based upon.

Chair Ball: Well, let's clarify that. Are you saying that the recommendation is a decision? Because we're not making a decision today, we're just making a recommendation to the County Council on the CPA?

Mr. Pierce: Well, yes Mr. Chair. It would be our position that that recommendation needs to be as the Maui Code section that I cited needs to be based upon findings and conclusions and we don't think that you can get to those if in fact the environmental assessment turns out to be faulty based upon the Circuit Court action.

Chair Ball: Okay, well we can wait for that to come out but until then we'll continue on with this portion of it and get our questions answered and if the Court finds that to be so then they'll do so at the time. I think it serves the public better good to hear more questions from the Commissioners than it does to wait for some documents that may—

Mr. Murai: Just to be clear Mr. Pierce, there's no...I mean, I'm aware of your Circuit Court action, but there's no request to the Circuit Court to issue an order for stay?

Mr. Pierce: We don't think that that's the place. We think that the Circuit Court in this instance wouldn't have jurisdiction to decide whether you all to stay something or not. We think that's within the purview of this Commission. But I'll rest there Mr. Chair. I think I understand...I think the Commission understands our position on that. Thank you very much.

Chair Ball: Yes, thank you. Did you have a question?

Mr. Robinson: The stay is on the SMA on D-1, not on C-1 is that's correct?

Mr. Murai: Yes.

Mr. Robinson: So we deferred D-1?

Mr. Murai: No, no, no. Well, D-1 is just the motion to intervene.

Mr. Robinson: The motion to intervene.

Mr. Murai: And for a stay.

Mr. Robinson: And for a stay.

Mr. Murai: And C-1 is the public hearing.

Mr. Robinson: Right.

Mr. Murai: And action on the public hearing matter.

Mr. Robinson: But there's no, but there's no recommendation...there's no request for stay for the community plan amendment? So this isn't the place to hear his testimony for a stay anyway? I'm trying to keep the two separate that's why and it keeps on intermingling, right? Okay. So we're on path?

Chair Ball: Yeah.

Mr. Robinson: Thank you.

C. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. VICTORY DEVELOPMENT requesting a Community Plan Amendment from Multi-Family to Hotel and a Special Management Area Use Permit for the Nani Loa Condominium Hotel project, a 39-unit hotel condominium project and related improvements on approximately 1.438 acres of land at TMK: 3-9-020: 032, Kihei, Island of Maui. (CPA 2015/0002) (SM1 2015/0004) (P. Fasi)**

Chair Ball: Okay, we're on Item C-1, Victory Development. Commissioner Tsai had questions for the Staff Planner, Paul Fasi.

Vice-Chair Tsai: Hello Paul, we're back to questions. Thank you for your time. So going back to your presentation in the morning and I just wanna get clarification on time line here. And I'm hearing you said that in the 70's this particular development was Hotel?

Mr. Fasi: That is correct.

Vice-Chair Tsai: And then you also stated that in 1994 it was changed to Multi-Family?

Mr. Fasi: 1998.

Vice-Chair Tsai: '98 I'm sorry. Yeah, but then in 1994 this was approved for condo development?

Mr. Fasi: That is correct.

Vice-Chair Tsai: So in 98—

Mr. Fasi: A 48-unit condominium project.

Vice-Chair Tsai: So two questions I have regarding that. If 1994 based on the 70's decision isn't a hotel and condo totally two separate zoning requirements?

Mr. Fasi: You can have a condominium in a Hotel zoned area.

Vice-Chair Tsai: Okay. And in '98 what made it change to Multi-Family? Do you have any data on that?

Mr. Fasi: I was not. I don't...I can't answer that.

Chair Ball: Director?

Mr. Spence: At the break I did look up the community designations and tried to look at the community, you know, the table in the back, the community plan and everything and do a little research on the zoning for the various properties. The...it apparently was Hotel prior to 1998 this particular property. And the zoning, you know, my preference would for comprehensive zoning but it's never been a practice of the County the appropriate zoning would have been for Apartment so they never changed it. The zoning for this property is still Hotel and whenever it was established. So that's...

Vice-Chair Tsai: So it never got changed Director to Multi-Family?

Mr. Spence: No. But you can do apartments and you can do condominiums within the hotel zoning. What this applicant is asking to do is to build condominiums that individual owners could rent out which would be permitted. It's the same thing at Nani Loa or excuse me—

Chair Ball: Kai Nani.

Mr. Spence: --Kihei Kai Nani. They are also zoned H-2, the...what Commissioner Hedani prompted me in his discussion prompted me to look it up, Kihei Kai Nani is zoned H-2 with a little bit BR-Resort. Their community plan is also Hotel. So the adjoining is they operated like a hotel with short-term rentals that's...but they're individually owned units. That's what this applicant is asking for exactly the same thing. They have individual condominiums that the owners could short-term rent. It's a condotel.

Vice-Chair Tsai: Okay, thank you Director for that. But what I don't understand then is why in '98 it was changed to Multi-Family and was it and only for this particular property?

Mr. Spence: Okay, I did not look through the minutes. Apparently it changed...(inaudible)...Maui Planning Commission level and then onto the County Council for final adoption. I was involved somewhat at that time in the community plan, that particular community plan. I don't, I don't recall a whole lot of discussion about this area. I recall much more discussion about project districts mauka of Piilani Highway, big project districts over by Maalaea. This was...I don't recall this being a pressing issue. I could be wrong; I'd have to do some research on that.

Vice-Chair Tsai: So you're confirming that this is only for this particular property not Kihei Kai Nani. So why was, I guess my confusion is why was this particular property converted to Multi-Family while the whole Kamaole Big Block, whatever they called it.

Unidentified Speaker: Super Block.

Vice-Chair Tsai: Super Block.

Mr. Spence: I can't say. I can't say. There's a lot of...most of the properties in that area are still zoned H-2, Hotel.

Vice-Chair Tsai: But this particular one was somehow—

Mr. Spence: Well, the community plan changed, the zoning did not. Community plan...that's what...they're requesting to change the community plan in order to make the different layers line up.

Vice-Chair Tsai: But if the community plan changed wouldn't it change the entire Super Block?

Mr. Spence: No. No, individual. This is a procedure laid out in County law but individual property owners can approach the County to change the community plan designation and/or the zoning on their property.

Chair Ball: Commissioner Hudson?

Mr. Hudson: Please explain to me who makes the community plan?

Mr. Spence: It's a long process. I can do 30 seconds or less.

Mr. Hudson: The CliffsNote version please.

Mr. Spence: Okay, CliffsNote version. It starts in the Planning Department. The Planning Department takes the existing community plan, looks at the current conditions, what has changed since the last community plan was adopted and we recommend changes to those plans. It goes to the Community Plan Advisory Committee, the CPAC, for six months. They make recommendations to the Planning Commission. The Planning Commission will consider all the information thus far and they will make recommendations to the Council. So the CPAC will make changes to what the Planning Department recommends. This Planning Commission or any Planning Commission will make changes to that whatever the CPAC does and then ultimately make a recommendation to the Council and the Council is gonna adopt it in whole or they can make their own changes and usually do at their level.

Mr. Hudson: Who sits on the CPAC?

Mr. Spence: The CPAC are political appointees.

Chair Ball: Members of the public.

Mr. Spence: Members of the public. They are one appointed by each Council member and four appointed by the Mayor.

Mr. Hudson: Thank you.

Chair Ball: Staff Planner Fasi?

Mr. Fasi: The consultant, Jordan Hart has a historical slide on here and that will help explain Commissioner Tsai's question and if you look at...this is the before slide, but if you look at the slide that's relevant today, you'll notice on the north south of this parcel that's it's still zoned Hotel. But this is the earlier slide from 1985.

Mr. Jordan Hart: This is Jordan Hart from Chris Hart & Partners. So I was also not involved in this community plan amendment. My understanding of the backstory on it was that in the preparation for the community plan update there was a hotel moratorium that lasted for approximately one year. At that time all of the undeveloped parcels in the Kamaole Super Block were designated to Multi-Family not only this project but some others and I'll go back to that current community plan map it will show what other areas were redesignated. And so this is the current community plan that we're operating off of which is 18 years old now.

Vice-Chair Tsai: Thank you Paul. Thank you Jordan.

Mr. Fasi: Any time. You'll notice on this particular slide that the north and south lots are also zoned, currently zoned Hotel in the community plan.

Chair Ball: Further questions? Commissioner Robinson?

Mr. Robinson: Mr. Fasi when was the...when was this property purchased from the current owners?

Mr. Fasi: Approximately 2006, approximately.

Mr. Robinson: And I thought we saw during the EA as part of this they had the documents showing that they had, they had the easements and all that part of stuff and part of that purchase, right?

Mr. Fasi: That is correct.

Mr. Robinson: It was also stated in there that it was Multi-Family not that it was Hotel I thought in that paperwork on the EA as part of the purchase of what the zoning was, I mean the community plan on that or am I incorrect?

Mr. Fasi: No, I think you are correct.

Mr. Robinson: So when they purchased it, they knew the current status?

Mr. Fasi: I believe so.

Mr. Robinson: Thank you. I got a question for Jordan. Jordan, that's really good information that...sorry...

Chair Ball: Go ahead, Commissioner Robinson.

Mr. Robinson: That was really good information. Can you confirm that or can you elaborate on that in a large area of what you just told us?

Mr. Hart: Which?

Mr. Robinson: About it was a moratorium is what you...do you have any data with that?

Mr. Hart: So that's anecdotal recollection from conversation with my father who was at the Planning Department at that time. I'm sure the Planning Department has their own records. A lot of things happen at various times, but I'm sure there's information on it in the record. Yeah, I don't have the full portion of the detail, but that's generally what did take place is that in preparation for the community plan they wanted to take a step back and reconsider what was going on in the vicinity and that's what they did.

Mr. Robinson: Thank you.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Director, has that ever been used again since then or that there was a temporary moratorium to try to take a breath?

Mr. Spence: I don't recall. I know there was a...when I started in 1992 there was I recall a moratorium of hotels and that was when Linda Lingle was Mayor. I would have to, I would have to look at the history but I know there was a stop to more hotel development at that particular time whatever 22 years ago. I can't tell you the exact reasons.

Mr. Robinson: Thank you.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I guess this is a question for the Director also. I served on two Community Plan Advisory Committees one that had like 300 members on it during Elmer Cravalho's time and that was kinda difficult to manage. Another one that had like 25 or 50 members on the

Community Plan Advisory Committee. And now I understand there's nine plus four so there's like 15 people on the Community Plan Advisory Committee as you just described it.

Mr. Spence: It has always...for community plan perhaps I can't say in the 80's, the Community Plan Advisory Committees have always been 13. It used that on the General Plan Advisory Committee that would have been a larger number.

Mr. Hedani: Or the 300 might have been—

Mr. Spence: Three hundred and—

Mr. Hedani: It might have been a combination of all nine community plan areas possibly. The question that I have is when the Community Plan Advisory Committee makes a recommendation in this case 1994 which eventually was adopted in 1998, do they consult with the individual landowners that own those properties before they down zone property from Hotel to Multi-Family?

Mr. Spence: No.

Mr. Hedani: So they just do it on their own?

Mr. Spence: Well, a—

Mr. Hedani: And the second question that I have at that point is if they down zone the property are the owners entitled to just compensation for the devaluation of their property?

Mr. Spence: Okay, the latter is a legal question. I would...my guess would be no, they're not entitled to just compensation simply because there's still an economic use of the property. They could build condominiums. That's not a bad thing.

Mr. Hedani: Not a hotel.

Mr. Spence: Not a hotel. But for...through the community plan processes many landowners are very aware of the process and actually come to the CPAC meetings and come to the Planning Commission meetings and make requests, I would like to be Hotel instead of Business. I would like to up zone from Rural to Single-Family, those kinds of things. But even last minute, and this is and that's something that the community is not very fond of even at last minute where all the community plans I was involved with there's quite a few changes up at the Council level. Last minute requests, last minute changes of different things. And that's the way our process is set up. Many landowners are very aware, there are other landowners that they don't know that at all. So it's discussed in public and they didn't know their property was being discussed.

Mr. Hedani: Wow.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Okay, a question for the developer or Jordan. Well, traffic's always a big issue especially in that area South Kihei Road. So in our previous meeting we had looked into or discussed a possibility doing construction period to utilize that portion of north-south connector using for construction vehicles, even parking for the construction crew. Is that valid still?

Mr. Hart: Oh, yes. The applicant is intending to do so and they've...bring up Greg Walker of Victory Development to talk about the discussions with the abutting property owners.

Mr. Greg Walker: Hi Greg Walker, Victory Development. Yes, I've had multiple conversations with the landowner adjacent to us and we have already walked the property. We've determined a route, we've got it in writing, we've got an agreement at the attorneys right now to be signed and that would be the length of our construction period as well as parking vehicles and staging equipment. It's our hope once we get our utilities down on the driveway with our instructed plan that we put up a dust fence and we do everything we can to minimize the impact to Kihei Kai Nani.

Vice-Chair Tsai: Okay, so you're not gonna use that road or South Kihei Road for all the construction ...(inaudible)...

Mr. Walker: That would be correct.

Vice-Chair Tsai: Okay, thank you.

Mr. Walker: And right now there is a rock wall that is right on the property against the north-south collector road that allows us access easily through that road.

Vice-Chair Tsai: Great. Thank you.

Chair Ball: Commissioner Lay?

Mr. Lay: Okay, so our left-turn going into the project, you said we're gonna make a collector road...well, you know for your left turn into the project how is that going to be developed?

Mr. Hart: The right of way currently exists and so it would just consist of restriping the existing right of way.

Mr. Lay: Would we lose parking stall, beach parking stalls on the right-hand side?

Mr. Hart: There potentially could be a loss of beach parking stalls. Let me...If you see the diagram here there is a...it looks like there's one stall so there's the...one moment...there's a white car parked here I believe that's a single stall and there's hashed portions around it and so you would, you would likely lose that stall in order to basically allow the south bound to continue. So the south bound would basically rather than proceeding straight it veer slightly you know to

the right and you'd be driving in what's currently hashed mark and a single parallel stall and then you'd merge back with the current alignment of the lane and continue south. And so in that median would be, would be this left-turn lane so the vehicles could stack there to take the left.

Mr. Lay: So your cars would swerve around there. They would have go against your curbside and then come back out?

Mr. Hart: Well, I wouldn't say that they would swerve. I mean it would be, it would all designed and approved by Public Works so it wouldn't be taking any kind of angles that are not normally seen in traffic. But yes, it would, you would basically go to the right a little bit in order to add this what's gonna be a third lane basically...it's not a lane, but a stacking location for vehicles.

Mr. Lay: See if you're losing one stall I don't mind that much that but if we're gonna lose more than that beach parking right now is really hard over there. I was just there this weekend and you're like a stalker following people walking on the side of the road, hoping he turning to open their. So that would be a concern of mine. And how far back is your collector road gonna be?

Mr. Hart: The stacking lane, it's not...none of that is defined at this point and just to back up the reason it's not currently defined is because based on the standards that are accepted for preparing a traffic study there's no mitigation required. But public works did recommend this, this left-turn pocket lane as an option to improve the situation and so that the applicant's open to it. So it would certainly be defined like we could have it defined at SMA, but at this point the conversation is there's an opportunity in the right-of-way to provide this, is the applicant open to it? Yes, the applicant's open to it and that's where we are now.

Mr. Lay: Yeah, my concern is always losing public access.

Chair Ball: Jordan, is there...did the traffic study take into consideration that storage lane in their study at all?

Mr. Hart: No, their study is based on it not existing.

Chair Ball: To see what the counter effect would be of that, right? Traffic might speed up a little bit more, I don't know, right because you're now creating flow instead of slowing it down by having a couple of cars turn in there once in a while, I don't know.

Mr. Hart: If I could address traffic again. The only action that has any delay is the property...leaving the project driveway. South Kihei Road in both directions there's no obstruction, no signal, no stop sign. So they just proceed right past the project site. The only people who experience a delay are people who are taking a left across northbound traffic to head south on South Kihei Road. So basically what I'm trying to say is the people who are currently impacted are current residents and there's gonna be a slight increase by 39 more units where there...if you're trying to take a left out of the driveway you're gonna have to wait for a gap. If you're gonna take a right you just merge right into traffic going the same direction as you area. And traffic on South Kihei is unobstructed in both directions. The only, the only delay is if

you're heading south and you wanna take a left across northbound traffic into the driveway and for that, the left-turn pocket lane is proposed.

Chair Ball: I just don't know the unintended consequences if you create a storage lane and somebody let's that person turning out of Kihei Kai Nani south why would the traffic flowing on the other side of that I don't know, I mean...(inaudible)...

Mr. Hart: I will say that there are a lot of configurations like this existing on South Kihei Road where you have a stop line where you wait to take a left and it's currently supported...it's Public Works recommendation.

Chair Ball: Well, just because it's Public Works recommendation doesn't mean it works. I only got a couple of meetings... Commissioner Robinson?

Mr. Robinson: Jordan, it's unfortunate that your traffic guy wasn't here today, very.

Mr. Hart: I understand completely.

Mr. Robinson: Looking at the photographs over there, I see us losing more than just one stall. I see us losing four, five, six, seven stalls. So if you look up higher to where the...if you look, okay, look on your picture on the right, I don't see any cars parked on the street on the whole street above.

Mr. Hart: So—

Mr. Robinson: That's a concern.

Mr. Hart: To respond to your comment is that this is the first stall here.

Unidentified speakers from Audience: No.

Mr. Hart: Well, I'm sorry.

Mr. Robinson: It's unfortunate your guy is not here.

Mr. Hart: We're addressing an aerial photograph of the situation.

Mr. Robinson: Got you.

Mr. Hart: So apparently you know—

Mr. Robinson: You guys didn't really do the...like a predrawing of it, it's more of a conceptual right now is that we're looking at?

Mr. Hart: Absolutely.

Mr. Robinson: Okay.

Mr. Hart: We don't even have community plan designation to get an SMA Major Permit at this point.

Mr. Robinson: Okay, 'cause I think when we come back I think if the picture ends up being the same it might be a big problem.

Chair Ball: Director?

Mr. Spence: Commissioners if I could make a suggestion simply because it's 2 o'clock and you have three more public hearing items. I think the questions that Commission Robinson is asking are good ones, the kind of questions the Commission is bringing up. Those are really related to Special Management Area Permit where you're gonna dig into much more of the detail, the actual operation and the design and those kinds of issues. If it please the Commission this is gonna come back to you for those kinds of details, what's before the Commission today is not the SMA Permit but the Community Plan Amendment.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: Move to approve as recommended.

Mr. Medeiros: Second.

Chair Ball: There's a motion by Commissioner Tsai, second by Medeiros to approve recommended.

Mr. Murai: On the community plan amendment.

Mr. Spence: Just the community plan amendment.

Chair Ball: Further discussion? Commissioner Hedani?

Mr. Hedani: Yeah, I just wanted to clarify that it's a motion to approve the community plan amendment recommendation to the Council and that discussion on the SMA is deferred until we get it back.

Chair Ball: Yes. Correct. Thank you. Commissioner Lay?

Mr. Lay: Commissioners I may not be here when it comes back so I'd just like to mention a couple issues that you might wanna bring up when it does come back. One would be drainage during the project when it's going on, the mud like that where is that gonna stop? Talking about all that after, but you know, that's gonna be happening when they're developing the project. And also, what else...oh, that's about it. That will be an important one to me about the drainage

when the construction is going on that all that mud's gonna be coming down if it does rain and wanted to know what kind of precautions they're gonna be doing to prevent that from happening.

Chair Ball: Commissioner Hudson?

Mr. Hudson: Just a brief comment...(audio feedback)...I think it's good that we have like nine people on the commission because that means nine different opinions. If we all had the same opinion then there would be no need for the commission. In my opinion the community plan was made with input by the community and for the community. While I understand that community plans can be changed in my opinion, the change must be necessary for the community to improve the community. I don't see that here. The owner purchased the thing in 2006, he was aware or should have been aware of the zoning requirements. I'd like to thank Jordan though for addressing the water concerns. I appreciate that very much. Thank you.

Chair Ball: Commissioner Hedani?

Mr. Hedani: The thing that bothers me about the community plan amendment that was done in 1998 to change it from Hotel, H-2 to Multi-Family is it can be done without the consent of the owner of the property. I think what that puts the County in a position of devaluing property, down zoning property without discussion with the rights of the private property owner, without consideration. To me the community plan should be something that everyone comes together and agrees on. An owner comes forward and says I'd like to change this from X to Y and the deliberations go on and it's decided yes or no. When 9 people or 15 people make unilateral decisions on other people's property without their consent it really bothers me to some degree as something that is not fair to the person who's in this particular case paying Hotel, H-2 zoned property tax payments based on H-2 zoned property and not being entitled to use it. You know we heard today from some of the testifiers saying you know, we'd like to see it be a retention basin basically for drainage for 300 acres up mauka some place coming down from Haleakala.

In this particular case, I think the development itself has addressed all of the concerns that they can address within the four corners of their property. The Kihei Kai Nani next door only addressed those concerns that were applicable at the time the property was constructed way back when. They wouldn't qualify today under today's drainage guidelines because all of...you know, although I've heard a lot about protection of the reef and whatnot, all of the drippings from all of the cars in their parking lot today goes straight down into the center of the driveway and goes straight out into the ocean. Whereas the proposed development has retained their drainage onsite and their parking is underground where it's not gonna be flowing into the drainage system as far as petrochemical pollution is concerned.

And to take it one step further, the Kihei Kai Nani has H-2 zoning. The Kihei Kai Nani has community plan H-2 community plan. All...this particular development was part of the Kihei Kai Nani until it was split up and all they're asking for at this point is the exact same zoning that Kihei Kai Nani has today.

One way that I think we can address later possibly to come up with a win-win situation is for Kihei Kai Nani to make a decision whether or not they want to eliminate the drainage hazard that they have on their property which is a real hazard and see whether or not they can work with the developer in terms of implementing that on their behalf at Kihei Kai Nani's expense in order to solve the problem on their property while the whole place is dug up for utilities to be put in place. But I think they've done everything right. I think that they should be entitled to a community plan change for H-2 in concert with what Kihei Kai Nani already has.

Chair Ball: Commissioner Robinson?

Mr. Robinson: We have a lack of information regarding why that change happened in '98. I don't wanna presume that the landowner did or did not know 'cause we don't know. The landowner might have said can I get a reduction in classification so I can save on some taxes. You know, there's no research either way. I mean, you know, if I don't plan on building there for 10 years and I'm a Hotel, and you know, maybe he asked for it, we don't know, you know. All we know is that they purchased it as a MF/H-2 and so now we're stuck here trying to decide what it is, and we're the Planning Department, we're not the Reaction Department. And with trying to plan, you know, instead of trying to react to what happened you know, in '98 again with the lack of information from the, from the Planning Department to actually know why it was changed, I mean it must have been brought up somewhere in some minutes, somehow would have helped I think save attorneys and save a lot of people because there's a...you know, they wanna intervene on just this one action. It's hard for me to just go ahead and change a zoning, I mean change a use without any information. And I think the developer itself I like what they've done with the heights, you know, they've made adjustments. They've heard us at our planning commission before on parking and try to do everything, it might not be everything that the Kai Nani wanted but you know we've had some developers that do zero. So I think as far as development I think they're trying. But the challenge right now is, is how are we gonna react with everyone that's gonna look at this '98 paper and say yeah we're the same part. You know you guys gave us a moratorium. We're supposed to be H-2 as well. I don't have enough information for me to comfortably vote either way. Thank you.

Chair Ball: Commissioner Tsai?

Vice-Chair Tsai: You did call me. As the maker of the motion I echoing what Commissioner Hedani has said. We can't go back and change what happened in '94, '98 and the 70's. I mean obviously there was a inconsistency with the community and how the zoning came about. But the way I feel is that we're faced with a situation right now to make it consistent to Kihei Kai Nani, what's happening around the whole neighborhood in that area and it's well within the regulations and what other uses have occurred and is occurring. So I don't see any problem with that. I think that the developer done a tremendous job putting together a really nice package. And personally I feel that if we do offer them another alternative, say go in Multi-Family, say go in with a affordable housing, you guys gonna see, the community gonna see a much higher density, you know, this type of development that's gonna attract more people and create more traffic issues and other things that we haven't considered. So I believe this is actually the best use currently and that's the reason why I made the motion.

Chair Ball: Commissioner Medeiros?

Mr. Medeiros: I agree with Commissioner Tsai and Commissioner Hedani. You know the zoning, it's zoned for a hotel on both sides of that property and Kihei Kai Nani which is makai said of the property. It's surrounded by Hotel. For some reason in '98 it was taken away from them, you know. But even if it was taken away from them because they did have the option for applying for a community plan amendment. They're doing the right thing by applying and going through the motions and doing what they need to do the same thing whoever in '98 did when they changed it. If the people that disagree with me that you know, they shouldn't be allowed to apply and change, you know, I'm sorry, but somebody applied and changed it to begin with. So I'm gonna support the change.

Chair Ball: Director?

Mr. Spence: I was just gonna mention probably between now the Council will probably look back through some old minutes and find out if there's any mention of why it was changed, if the landowner knew, et cetera, et cetera. ...(Inaudible)...

Chair Ball: Commissioner Hedani?

Mr. Hedani: One of the problems that we come across today is that we have hotel developments occurring on a spot basis in Residential Districts, yeah, short-term home rentals. It's a very controversial issue. This Commission voted unanimously at one point to recommend to the Council because the Council is the decision making legislative body to put a moratorium on it until residential housing, affordable housing can catch up.

Chair Ball: It wasn't unanimous.

Mr. Hedani: You weren't chairman at the time so it's not your problem.

Chair Ball: No, it wasn't unanimous.

Mr. Hedani: Oh it was one dissent?

Chair Ball: I think there were two dissent.

Mr. Hedani: Almost unanimous. But the problem that we have today is it's kinda like whackamo where you put a cap or in this case it was a moratorium on hotel development in hotel development areas like the Lahaina...well, the Lahaina 701 General Plan was done at the same time the Kihei 701 General Plan was done, and where they identified hotel properties is probably where the hotel properties should have gone. If those had been approved for hotel development the whackamo scenario that we have right now with hotels popping up in residential areas wouldn't take place as severely as it is right now. So that's my perspective on it.

Chair Ball: Okay, all in favor of the motion?

Unidentified Speaker: Can you repeat the motion?

Mr. Spence: The motion is to recommend to the County Council approval of the community plan amendment as recommended by Staff.

Chair Ball: All in favor raise your hand and say, “aye”.

Commission Members: Aye.

Mr. Spence: That’s five ayes. Nays?

Chair Ball: Opposed?

Mr. Spence: Three nays.

Chair Ball: Motion carried. We will take a five-minute recess.

It was moved by Mr. Tsai, seconded by Mr. Medeiros, then

VOTED: To Recommend Approval of the Community Plan Amendment from Multi-Family to Hotel to the County Council and Defer Action on the Special Management Area Use Permit Until the Council has Acted on the Community Plan Amendment, as Recommended by the Department.
(Assenting - M. Tsai, J. Medeiros, W. Hedani, S. Duvauchelle, R. Higashi)
(Dissenting - L. Hudson, I. Lay, K. Robinson)

A recess was called at 2:12 p.m., and the meeting was reconvened at 2:19 p.m.

Chair Ball: Okay, we’ll call this meeting back to order on Item C-2, Director?

Mr. Spence: Commissioners, yes this is the second of four public hearing items for today. This is Mrs. Helen Lu`uwai requesting a time extension for a Conditional Permit in Makena and our Staff Planner this afternoon is Gina Flammer.

2. MRS. HELEN LU’UWAI requesting a time extension on the Conditional Permit to continue to operate the Lu’uwai Transient Vacation Rental (TVR) and hold Special Events at 5100 Makena Road, TMK 2-1-007: 088, Makena, Island of Maui. (CP 2006/0007) (G. Flammer)

Ms. Gina Flammer: Good afternoon, Commissioner Members. Before I turn it over to the

consultant, Rory Frampton, I'm gonna just give you a real quick history. The applicant applied in 2006 and what she applied for was a District Boundary Amendment from Rural to Urban and a change in zoning from Interim to R-3 as well as the Conditional Permit. So there was a lot of effort by the applicant. The permits were or the actions were granted at the end of 2007. They became effective in January of 2008. The first two actions, the DBA and the change in zoning those are permanent actions. The third, the Conditional Permit as you know is granted for a certain period of time.

So the applicant did file a timely request for the Conditional Permit. The process for time extensions for that is that the applicant sends out notice of the request for the time extension to all owners of properties within 500 feet. It only takes one protest to send it back to the very original process that it went through. First to you and then to the County Council. There was one letter of protest. As you see it's Exhibit 22. I don't know if they're here today or not. I know they are part-time residents. They did know about today though and there's also been six letters of support. One has been handed out today that I think you have in packet. So I'm gonna turn it over to Rory Frampton now to give you a little more history.

Mr. Rory Frampton: Thank you, Gina. I'll try to be real quick as well. As Gina noted...I just wanted to comment just hearing that discussion that just happened earlier one of the reasons the applicant had to come in and do the change in zoning and the district boundary amendment was to bring it, the property into compliance with the community plan designation which was single family. The underlying zoning was actually apartment and so anyways, there was kind of a mess in land use designations from way back when and so they got that cleaned up. They also came in and got the Conditional Permit back at a time when people really weren't doing that. They were one of the first people certainly in the Wailea-Makena area that actually got their property legalized. It had been operated as a bed and breakfast with a member of the family actually running the property. He lived on property with people doing a traditional bed and breakfast during the 90's and through the 2000's the family has since kinda reorganized the ownership of the property and they're using as a transient vacation now. Again, they got it legal. As one of the testifiers mentioned earlier today it's a way. It was a way for the family to keep the property in family ownership and to use it from time to time and generate some income to pay taxes and a mortgage. And the property taxes alone are like \$20 thousand a year. So this became...the use for transient vacation rentals became a very important component of or a part of the family being allowed to keep the property in their hands.

The property is modest in its development. There's a lot of lawn space. There's incredible views and the setting is just...some of you may have been down there. It's not like surrounding areas that have really built out their properties almost wall to wall concrete. So it is kind of a nice, refreshing break in that typical developed...development of properties in the area. If you see some of the testimonies in support, a letter from the Protect Kahoolawe Ohana at the end of the report I think is really powerful. And so what we would like to ask for you to consider is the staff has recommended a 20-year extension. We'd like to request that the language be worded in such a way that it's 20-years from when the ordinance gets approved rather than 20 years from the previous time period which would have been 2010. But anyway so we'd like to have it 20 years from when this new extension gets approved so that they won't have to come back.

And so I have...I'm familiar with the letter that came in that was opposed and I'm very familiar with the property having been life-long friends of the Luuwais. And if you have any questions we can answer any of those technical questions. That's all I have.

Chair Ball: Okay, at this time we'll open it up for public testimony. Anyone that would like to testify at this time may do so? Tom?

a) Public Hearing

Mr. Tom Croly: Aloha, Tom Croly. Just a brief perspective. I knew Boogie and Vi when they operated this as bed and breakfast in the early 2000's. In some ways they were an inspiration to me to open up my bed and breakfast after that. Boogie and Vi left and they went to the Big Island I believe and their family members continue to run this and it's you know, well accepted down there and I would encourage the Commission to grant the extension of this Conditional Permit to allow this short-term rental to continue. Thank you

Chair Ball: Any questions for the testifier? Seeing none, thank you. Further testimony? Seeing none, public testimony is now closed. Recommendation from Staff?

The following testimony was received at the beginning of the meeting:

Mr. Glenn Kosaka: Good morning Mr. Chairman and Commissioners. My name is Glenn Kosaka and I'm here to testify regarding item C-2, the Luuwais in Makena request for an extension of the Conditional Permit. I work with one of the applicants, Mrs. Luuwai and I've known the family for 40 years. This is not about making money. This is about being able to preserve the property for their family. This is family property. The Makena Resort area contains many, many, a whole multitude of beautiful fancy hotels and accommodations. Luuwai's Makena offers a unique and refreshing, a truly beautiful experience not available in the fancy hotels. This place is a family home. Right now it's a little larger than Papa John Luuwai's fishing shack but the feel of the place is the same.

The warmth and aloha of the place can perhaps best be expressed with the following anecdote. One day I was standing in the front lawn with Anela Rosa, one of the Luuwais. And she was gazing out at the ocean at Molokini and Kahoolawe and in a very soft voice, she and I were the only ones standing there, but in a very soft voice and with glazed eyes she said, this is the most beautiful place in the world. Now I have never forgotten that small moment in history and I hope that this Commission would recommend approval of their request to recommend approval to the County Council so that the Luuwai Family can continue to maintain their heritage. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, we will continue on.

Ms. Zandra Amoral-Crouse: Hi, good morning. My name is Zandra Amoral-Crouse and I'm not going to...I was not going to testify but the Luuwai Family when I was growing up my very best friend was the granddaughter of...Davelyn Luuwai-Thomson was my very best friend and spent many weekends in Makena with Grandpa Luuwai and the brothers and sisters and her aunties

and uncles. And it's been very difficult. I know that most of you realize like with the Medeiros Family in Makena. It's difficult when a surrounding area gets developed and land prices go up and taxes are increased based upon the surrounding value. So my simple and short testimony is support the Luuwais because this is a family entity and we don't want to see another family being forced out of Makena. That's my testimony and I thank you for letting me cut in. Now I gotta head over to Kaunoa. Mahalo.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you.

Ms. Amoral-Crouse: Mahalo.

Mr. David Ward: Good morning Planning Commission. My name is David Ward and I'm here testifying on my own behalf and I'd like to testify in favor of Item C-2 on the agenda today, the Luuwai Conditional Permit.

This family is a part of our community and is really giving in a lot of ways. And I know first-hand experience that they do use this property for nonprofits, for things for nonprofits including the canoe clubs. And it's...you know these folks have owned this property for generations as we heard and it's a tough situation. You know there's been development in that area, prices have gone up and they're doing what they can to maintain the property and their family. So I'm just hopeful that you guys can, you know, help them in any way to help maintain that property. So again, I'm just here to testify in favor of Item C-2.

Chair Ball: Any questions for the testifier? Commissioner Lay?

Mr. Lay: Dave, I know you have some background in developments and projects and everything and the Luuwais has been a local family with a lot of changes going on around them, pricey homes, hotels, everything, bringing up the cost of the taxes. Do you think this, I mean is this one way where they can help to stay there?

Mr. Ward: Yeah, absolutely. This is, this is the way that they've devised in order to keep this property in their family. It's a tough situation. I think you know we heard it earlier. It's a really tough situation to deal with. They've been here, you know, they were there when they were the only house there and now there's been development all around them including a project that I've, that I've actually worked on, but because of that development the real property taxes have gone up significantly because of the values of the homes around them and this is a way that they can keep this property in their family and use it for...continue to use it for themselves and also share it with others.

Mr. Lay: Okay, thank you.

Chair Ball: Further questions? Seeing none, thank you. Would anyone else like to testify at this time?

Ms. Lucienne de Naie: Aloha, my name is Lucienne de Naie. I've not signed up yet. I'd like to

testify on two items C-1, and C-2. I'd like to testify as just a private individual on C-2 the Luuwai permit in support of it. The Luuwai Family as you've heard have really, you know, taken what life has given them in this place that their family has lived for generation and adapted their home place to be a wonderful resources for folks who visit our community and also for those of us who, you know, ask for use of it and are able to do other events there. I've been to some family reunions down there in the old days and it is a magical place. I know the Luuwai Family very well. They're very sincere in trying to find a balance to take care of things there. They're really expert in the ways of the ocean and fishing and so, you know, they're trying to do everything the right way and they are struggling to keep one last place...there's just them and the Changs and the Garcias and that's all that's left of old Makena. So please show them some kokua here. They've been trying to do things the right way.

This concludes the testimony received at the beginning of the meeting.

b) Action

Ms. Flammer: Okay, the Department...since this is a renewal we only have one condition that we're changing and that's the time period for the permit. The Department is recommending 20 years and maybe Corp. Counsel could weigh in to make sure we have the right language. We're recommending 20 years from the effective date from this ordinance. We just wanna make sure that that means it's from when the County Council passes the time extension.

Mr. Murai: That's how I read it.

Ms. Flammer: Okay, thank you for that. And that's the only recommendation that we have.

Chair Ball: Okay. We have questions now. Commissioner Robinson?

Mr. Robinson: Sorry, I just have one. Is the applicant is Ms. Helen Luuwai with that length would you add a second applicant or would that kick them out if...we'd wanna put the trust or is there is some kind of...I don't know, I just wanted to follow up with that.

Chair Ball: Rory you have an answer for that?

Ms. Flammer: Actually if we take a look at the ordinance itself it will show who holds the actual permit. ...(inaudible)...exhibit...oh, and four. Actually that's a really good question. It's actually in the trust.

Mr. Robinson: Okay.

Ms. Flammer: The permit goes to the entity that owns the property which is a trust.

Mr. Robinson: I move to accept the recommendation of the Staff.

Vice-Chair Tsai: Second

Chair Ball: It's been moved by Commissioner Robinson, second by Commissioner Tsai? Further discussion? In the act of disclosure I've known the Luuwais for I don't know probably 40 years. I know I don't look that old but through various canoe paddling outings and neighborly...so anyway, I will still be voting if need to on this. Commissioner Higashi?

Mr. Higashi: I personally agree that we should support our local families who have got caught in this whole rise in real estate and the tax situation becomes one that they need to supplement taking care of their property. So I'm totally for the motion.

Chair Ball: Commissioner Lay?

Mr. Lay: I, too have seen the problems before when the local people have lost their residence or can't stay there and I'm glad that you guys are doing something to retain that. There's not too many landowners from our past that still own the properties.

Chair Ball: Okay, Commissioner Medeiros?

Mr. Medeiros: Yeah, I support this too. Medeiros have a long history in Kihei not as long as you guys okay, but you know it's heartwarming to see an old family hang onto the past and you know, I'm familiar with the property. I love you guys. I love it.

Chair Ball: Commissioner Hedani?

Mr. Hedani: I have one question for Gina. This is the first time we're approving a time extension for 20 years for transient vacation rental?

Ms. Flammer: Is that a question? I think I have an answer for that. We've done 20 years for other types of permits. Maybe our Director has off the top of his head?

Chair Ball: Director?

Mr. Spence: This is falling under the Conditional Permit Law and not under the Transient Vacation Rental Law. So there's been actually quite a few conditional permits granted for 10, 20 years. It's not that unusual.

Ms. Flammer: I think the most recent one that you folks may have seen was for Arabella Arks ceramic studio. She was given 20 years for that Conditional Permit. That may be the closest.

Chair Ball: I think the Half Way to Hana Store.

Ms. Flammer: Was Half Way to Hana, yeah that was Paul's yeah.

Mr. Hedani: One other question, Gina. If the property is sold from the trust does the permit terminate?

Ms. Flammer: That would be Condition 3 that Rory was referring to. It is nontransferable unless the Council approves the transfer by ordinance provided that the transfers of ownership to and from an individual owner's revocable living trust and the assumption of the trustee's duty by a successor trustee including but not limited to exercising the rights established on the Condition Permit shall not constitute and shall not be deemed a transfer requiring Council approval. So it would depend, I think a transfer within a family within the same revocable trust would be fine, but the way I read it maybe Corp. Counsel if it's sold to somebody that's not a part of this revocable living trust then it would go back to the County Council for approval.

Mr. Hedani: I concur with all of the comments that were made by others.

Chair Ball: Okay, any further comments? We shall vote. All in favor of the motion raise your hand and say, "aye"?

Commission Members: Aye.

Mr. Spence: That's eight ayes.

Chair Ball: Motion carried.

It was moved by Mr. Robinson, seconded by Mr. Tsai, then

**VOTED: To Recommend Approval of the Twenty (20)-Year Time Extension on the Conditional Permit to the County Council as Recommended by the Department.
(Assenting - K. Robinson, M. Tsai, J. Medeiros, L. Hudson, I. Lay, W. Hedani, S. Duvauchelle, R. Higashi)**

Chair Ball: Okay moving onto Item C-3.

Mr. Spence: Commissioners, the next public hearing item is Daniel and Judith Auclair requesting a Conditional Permit in order to operate the Auclair Residence Transient Vacation Rental on Pulelehua Street in Kapalua. The Staff Planner this afternoon is Mr. Kurt Wollenhaupt.

- 3. DANIEL L. And JUDITH Y. AUCLAIR requesting a Conditional Permit in order to operate the Auclair Residence Transient Vacation Rental at 107 Pulelehua Street, Pineapple Hill Phase 2, TMK: 4-2-007: 020, Kapalua, Island of Maui. (CP 2015/0020) (G. Flammer)**

Mr. Kurt Wollenhaupt: Good morning or afternoon now Members of the Maui Planning Commission. My name is Kurt and I'm actually the Staff Planner on the Item C-4 which will be 100 Pulelehua and Gina Flammer is the consultant, the planner for 107, but I just wanted to since I've been involved in what's happened to Kapalua to give you a real brief overview and

then we'll start into Item C-3.

First question is well what's the issue at Pineapple Hill Phase 2 Kapalua and why are we even here? Isn't there a Short-Term Rental Home Ordinance and why aren't they applying for a Short-Term Rental Home Permit? Well, that's because the two applicants today the Auclairs and Steiners, they own in Phase 2 Kapalua. So we have two phases out there. How it was ever developed goes back into the annals of history. So we have 100 and 107. This is 100, this is the Steiner residence which will be the second one you review today. This is 107 Pulelehua. This is the item that Gina Flammer will be doing. This is all of Pineapple Hill. All State, State Urban. It's all community planned project district, but here lies the issue. Phase 1 is zoned Agricultural. The law clearly states that a short-term home rental permit can be applied for in the Ag zone, no problem. Go to through the STRH. You've seen so many of them.

This is Phase 2. The zoning there however is Project District. There's no mention of Short-Term Home Rentals in Project District. They can't apply for a STRH. Therefore their remedy is as you've ...(inaudible)...Ms. Luuwai's application to apply for a transient vacation rental through the Conditional Permit process. So when we look at the Conditional Permit what is our threshold? What are you as Commissioners is gonna be reviewing today? Really this is the question is the transient vacation rental in harmony with the existing project district to other permitted uses and not significantly detrimental to the public interest and welfare. And it says in the Code is...here are three criteria: Would this TVR be similar, related and compatible? The SRC of the hearing here today similar, related and compatible to other permitted uses in the district? So that's what we'll be looking at today.

So Pineapple Hill has said Phase 1 no problem apply for an STRH. In fact, three have been granted. Three STRHs are currently operating there. Phase 2 however has Project District zoning they have to apply for a Conditional Permit and whatever recommendation is made today is a recommendation to the Council. So this is just an overview. We might be using this later if the Steiners or the Auclairs need it, but this is Phase 2. These are estate sized lots, lots that are larger than in Phase 1 certainly. There are differences between Phase 1 and Phase 2. This is the Steiner residence at 100. This is 107 Pulelehua the Auclair residence.

So that's just kind of an overview that I wanted to give before Tom Croly and Gina Flammer take on Item C-3 which is the Auclair. If you had any questions about just why we're here, I'm happy to answer but they'll be giving a detailed presentation.

Chair Ball: Okay.

Ms. Gina Flammer: Okay, I think the only thing I wanna to add to that is how is this different than a short-term rental? Well, the Department wanted to keep them as similar as possible. So though the process is different we tried to create the same end product where the TVR is gonna look exactly like a short-term rental and we did that through the conditions. So when we get to the recommendation, I can explain a little bit more. There's a lotta conditions on there that make it look just like the short-term rental. So with that being said, I'd like to turn it over to the project consultant, Tom Croly.

Mr. Tom Croly: Thank you, Gina. Tom Croly on behalf of Dan and Judy Auclair, owners of 197 Pulelehua in Pineapple Hill Phase 2. As Kurt just said we're here for a Conditional Permit only because the Short-Term Rental Permit was not included as an option for us because of the very unique zoning to just these 31 lots in the Kapalua development.

As has already been pointed out the applicants are asking for the use of a four-bedroom, four-bath home for rentals period of less than 180 days at a time. They are asking for permission to use their rentals in consistency with the subdivision's CC&Rs and specifically are amenable to a condition that no parties or events my ever be held on the property.

As Kurt just outlined the zoning here is unique. It's Lahaina Project District 1. Now I wasn't around when Kapalua was developed but there are some unique districts within Kapalua that came about when they did the project district for the whole area of Kapalua. The zoning is a little bit convoluted in that as Kurt pointed out in Phase 1 where you have these quarter lots and these luxury homes terraced that's actually Agricultural zoning so go figure. And this the zoning is actually Multi-Family where you have these very large estate homes on half acre lots. So that's why we're here for a County Conditional Permit similar to the Luuwai's permit that was just, you know, approved for an extension.

The area where this is located is in the Kapalua Resort. And as you kind of already saw from what Kurt showed you there's two phases in Pineapple Hill, Phase 1 and Phase 2. Phase 1 has 99 lots that are about a quarter acre a piece. Phase 2 has 31 lots that are about a half an acre a piece. They all share the same CC&Rs, they all share same gate that you come through to access the development. They all share the resident manager who monitors the visitor access to the property.

Most of the homes in both developments are used as people's second homes. In Phase 2, 21 of 31 of the homes or lots are owned by out-of-state owners. The resort transportation for Kapalua comes into the development, again extending how it's just part of the Kapalua Resort and in Phase 1 to date there have been three short-term rental home permits that have been issued. There are some other applicants in Phase 1 who are also going forward with Short-Term Rental Home Permits. And to my understanding, none of those permits that have been issued have generated complaints or any problems.

So again, the applicant's purchased this four-bedroom, four-bath luxury home to utilize as their part-time vacation home and also as part of a 1031 exchange for those, you know, understanding tax purposes the idea of renting out was in their thoughts when they bought it. And specifically they have never operated as a short-term rental home. They purchased the home, they contracted me to help them get through the permitting process and we're here before you. The applicant's do intend to reside part-time on the property.

One of the reasons that the applicants chose this development and this home was that the CC&Rs specifically affirmed the ability to rent and the conditions upon which they would rent short-term. Now the CC&Rs will never give them the ability to do something that the County

hasn't said is legal to do and that's why we're here before you for a permit. But when these CC&Rs were developed clearly the expectation for this community was that these homes would be used in this manner.

And the first part of the CC&Rs is written here and that is the lot owners shall have the right to rent or lease their residences subject to the limitations set forth in the declaration of bylaws. And I highlighted the next one which is each rental or lease period must be for a minimum of seven consecutive nights. Each residence is limited to having one rental period during any calendar month. These owners expect that the rentals that they would be having would be two and three-week and maybe seasonal type rentals, someone coming in for as long as five months at a time that can't be done without a permit. So if you're gonna go in to rent your residence to someone for the period of the winter season you need to get a Conditional Permit in order to do that. CC&Rs continuing and you have these in your packet they go into very specifics about exactly how they will manage these short-term rentals. Lot owner who currently rents or intends to rent its residence must register. There's a registration process outlined here. They give the criteria for which someone is expected to be in the rental business based on what they've done in the past. In registering their homes lot owners shall provide the name and contact of at least one agent on Maui who will be present and represent the owners regarding any issues. They do have and have set up to employ a local agent, Mark Marchello. He was available this morning unfortunately we've been pushed out into the afternoon and I don't think he'll be available here for you today. But I will tell you that Mark manages other permitted short-term rentals in West Maui and is compliant and knowledgeable about what it takes to properly vet the guests and make sure that someone renting this property has...understands all the rules that we go along with it.

At least one week prior to the scheduled occupancy of a rental on the property, the lot owner shall...the lot owner of the property shall provide the association with a complete notice of occupancy and rental property form. So again, they have forms and so forth within the community expecting that this use is going to take place. They wanna register the guests and make sure that their clickers to allow access to the property are properly activated. Again, if they're not compliant with this there's specific rules to say you're going to be fined if you don't follow these rules for the short-term rentals in this neighborhood.

Jumping into the property itself, you can see from these pictures the type of home it is which is consistent with all of the homes in this neighborhood. They're high end luxury homes with beautiful views and swimming pools and you know, fancy bathrooms and such.

So we're here about the Conditional Permit and I won't belabor the point. Kurt already pointed out exactly the criteria that you're supposed to be evaluating that the use that we're asking for is similar, related or compatible with the other uses in this area. And that the proposed use will be in harmony with the area in which it's to be located and that there will not be significant detrimental...detriment to the public convenience and welfare.

As far as similar, related and compatible I would assert that the use that these folks are asking to make of their property is identical. If you are an owner living in the property and someone's

renting next door to you can say that's not the same as the way I am using it. But if you are a second property owner and you're using your property as a vacation home and you're only spending a portion of the year here which is the case for most of the folks who own in this subdivision that is an identical use to someone leasing the property for a week or month or a few months than, you know, than someone who's just using it as a vacation home.

The proposed use will be in harmony with the area in which it's located. I submit that the area which it's located is Kapalua resort. That is the use of the Kapalua Resort is one of vacation homes and exactly what the applicants have asked to do here. There is precedent for these conditional permits. Currently there are 12 conditional permits allowing short-term rental use that are active. Three were issued because the use that they asked for was more bedrooms than were allowed by the B&B or STR Ordinances. The B&B and STR Ordinances top out on six bedrooms. So there's three permits where there were seven bedrooms. I think Oprah as 12 bedrooms on hers and so some were because of additional bedrooms. However, nine were identical to this. It was because the zoning at the time that they submitted did not allow the use so they went the conditional permit route to permit the use they wanted.

Additional permits that were previously granted some of them were converted to short-term rental home permits, some were converted to B&B permits. However, some just like the one that you approved extension of stayed as conditional permits and they have been renewed as such.

Gina will go over the permit conditions, but I do wanna point out the permit conditions parallel our short-term rental permits except we did add some additional conditions to stay in conformity with the CC&Rs in this area.

The standard STRH conditions for a four-bedroom home is a maximum occupancy of eight guests. All guests must park on site. Amplified sound audible beyond the property boundaries is prohibited at all times. Quiet hours shall be maintained from 9:00 p.m. to 8:00 a.m. That means talking, that's means being loud in the pool. No parties or group gatherings and a sign shall be put up so that anyone with an issue has the information as to the number to call whether it be to the County to complain about something or whether it be to the manager to say, hey take care of an issue that, you know, might be ongoing.

The specific conditions related to the CC&Rs in here are the rentals shall be limited to one rental per month of at least seven days. That means a maximum of 12 rentals per year. They can only have one per month that begins in each month. So the most number of rentals they're ever gonna have is 12 in a given year, and that the applicant shall provide their information of their manager and so forth to their neighbors. So I thank you for hearing me out on that. I know they'll be some public testimony and you might have some questions afterwards. So I'll turn it over to whomever next.

Chair Ball: Okay, does that conclude then your presentation.

Mr. Croly: For mine, yes.

Chair Ball: What about you Gina?

Ms. Flammer: The only thing I wanted to do was just point out the handout and just make sure everybody understood what it is. I know there's not a key to it. So this is in the staff report, but I updated it to show that we got two new letters. So everything in red was a protest letter and then the number corresponds to the exhibit where the actual letter is. So there's a star for the one that just came in for Summerville. There was a letter of support as well. So it's a green lot. So in total we have about 30 lots in the neighborhood. There's about 17 protest letter, one actually lot with a protest, one owner does own three, you see that as number 26. There was one letter of support, two of the lots are requesting the use and then you have 11 lots that didn't have any comments on this, and that concludes my remarks.

Chair Ball: Okay, at this time we'll open it up for public testimony.

a) Public Hearing

Chair Ball: If you'd like to testify at this time you may do so. Please identify yourself. You have three minutes.

Mr. Fred Allen: My name's Fred Allen. I reside at 229 Crestview Road, Pineapple Hill, Phase 2 which is as you know a small 31-lot private just west of Honoapiilani Highway and north of Napili Park. We have been full-time residents in this neighborhood for over 14 years. I was taken back a bit when we received the notice that an application for a use other than what is permitted by the zoning was applied for and wondered how it even got accepted over the counter. There's no need for additional transient rentals in this area. Why would the County consider granting a CUP allowing for such when there are 100 lots immediately across the canyon in Phase 1 already zoned to allow permits. Why disrupt this neighborhood unnecessarily when there are plenty of high end rentals available in other Kapalua Resort communities including the 100 lots, the single-family homes in Pineapple Hill, Phase 1 just to the north and already zoned and designed with off street parking to allow and accommodate rentals with no special use permit required.

Our neighborhood in Phase 2 is unique and different from Phase 1 to the north in that these lots are twice the size and all homes individually designed. There is no provision in the layout on this side for off street parking which alone should be a reason enough to deny a transient rental in our area. By comparison, the 100 plus lots or 100 lots in Phase 1 development are half-acre in size with provisions for full out parking on the streets to accommodate visitors and renters. All lots in Phase 1 except double lots were designed by the developer, Kapalua Land who actually ran a rental program in the beginning years after opening. I might point out that Phase 1 was done 10 years prior to Phase 2, and Phase 2 obviously the bigger lots it's not comparable to Phase 1. Phase 2 is just not set up or compatible with the transient rental. Attempts to circumvent the zone and County requirements have been made with disastrous results. We lived there and have seen it. It is not uncommon for these high priced rentals to attract multiple families to share the cost resulting in three or four families and sometimes as many as 18 to 20

occupants. They paid a lotta dollars and don't...and most renters don't have consideration for the people that do live there. And I take exception to the fact that there are several of us that are full time residents in our area.

Ms. Takayama-Corden: Three minutes.

Mr. Allen: And who benefits? Two applicants one of which has been a violator to the County and HOA regulations in the past. Who does not benefit and who is harmed? Well, you have at least 17 letters before you and most of us that care to keep this neighborhood as intended and we expect there are additional, there's an additional five vacant lots we have not heard from and may not have knowledge of these applications. As well, there is one bank-owned house that's for sale.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you. Lynda Allen?

Ms. Lynda Allen: My name is Lynda Allen and I'm here to testify in opposition to the Conditional Use Permit for our 31 subdivision lot at Pineapple Hill, Phase 2. I would like to say to the committee that we have had several illegal renters in our community and we definitely have...even had taken pictures of as many as 18 people checking into a residence at one time. And how the property managers think for one second that they're gonna be able to control how many occupants come and stay in these residences and control the noise and control the bands that might...and we've had that happen as well, is just absolutely ludicrous and I don't understand how they think that they can get away with saying all these things that they will be able to control. It's obvious to us that they cannot control it. We've had neighbors that have moved away with ailing husbands because they couldn't stand rental properties on either side of them. So they just gave us. Our management, our property management is not able to control what is going on right now with, especially with the illegal renters who are still renting illegally by the way, and the Council and I don't know if the Commission is aware...are aware of these people, but they've been a real thorn in our side for the last two or three years now. And like I said our management is not able to control it, and neither has the County been able to control it. And you can fine these people all you want you're not gonna...you'll never see them on...you can fine them all you want, you're never gonna see it. And I know something else just popped in my head and it just flew right out. So anyway with that, I'm asking that you please disallow any CUP permit in Phase 2, Pineapple Hill. Thank you.

Chair Ball: Questions for the testifier? Commissioner Robinson?

Mr. Robinson: Hi. You testified that you have complained about these people before or the renters?

Ms. Allen: Oh sure, illegal renters, yes.

Mr. Robinson: So after today in a case they were to be denied what would change?

Ms. Allen: Nothing would change. That was my point.

Mr. Robinson: Unfortunately, it's not going to change.

Ms. Allen: That was point...making my point of the property manager saying that they will control eight people and absolutely no bands and you know, there's no way that they can control all that. Who, who are we gonna call at 11 o'clock at night or 10 o'clock at night when we're being disturbed? We'll call the property managers, but by the time they arrive it's already impacted our management office, it's already impacted our security. By the time the property manager gets there to shame on you, the problem will have gone away. But except for us it hasn't gone away. So...

Chair Ball: Commissioner Hedani?

Mr. Hedani: I think the one difference is if it's approved then the problem will be permanent and legal is the problem.

Ms. Allen: If it's approved the problem would be permanent absolutely.

Mr. Hedani: The question that I have is what was the intention of the CC&Rs relative to seven day rental agreements?

Ms. Allen: The intention of those CC&Rs were for Phase...the Phase 1 subdivision of Pineapple Hill. There are two different subdivisions. Phase 1 and Phase 2.

Mr. Hedani: We're dealing with Phase 2, yes?

Ms. Allen: Well, I'm talking about Phase 2.

Mr. Hedani: Right and Phase 2 in your CC&Rs there's a provision for one rental per month not less than seven days. What was the intention of that? Is that for family?

Ms. Allen: Well, I think the intention was that nobody wanted to write and draw up any new CC&Rs for a different subdivision. That's the only difference that I can see for the CC&Rs. They just used, they rubber stamped the CC&Rs just to...as...to expedite the construction of the lots in Phase 2.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Commissioner Higashi has a question.

Chair Ball: I called on you.

Mr. Robinson: Yeah, that's all right.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Ms. Allen you know on the CC&Rs?

Ms. Allen: Yes.

Mr. Higashi: Was Phase 2 residents actively involved in the development of that CC&R?

Ms. Allen: No, we were not.

Mr. Higashi: So you were not involved in that?

Ms. Allen: Phase 2 came along 10 years after Phase 1, so no. Phase 2 was not involved in the construction of the CC&Rs for Pineapple Hill.

Mr. Higashi: So Phase 2 never tried to amend the CC&R in that particular area?

Ms. Allen: Not to my knowledge.

Chair Ball: Question? Do you know how much they rent those? The ones, the illegal ones out for?

Ms. Allen: Can't answer that, sorry. I should know that but, I can't.

Chair Ball: It's just a question for the Department when they start making fines that make sense 'cause otherwise it's just the cost of doing business.

Ms. Allen: But I'm sure somebody in here would know.

Mr. Spence: Firstly, Staff Planner Kurt Wollenhaupt indicates that it runs for \$2,000 a night.

Chair Ball: Any further questions?

Ms. Allen: And higher, yeah. That would be a minimum I would think.

Chair Ball: Seeing none, thank you Lynda.

Ms. Allen: Thank you so much.

Chair Ball: Walt Kubiak?

Mr. Walt Kubiak: Hi, I'm Walt Kubiak, I'm the owner and broker of Maui West Side Properties and I'm representing two owners here today. I'm representing Richard Brown and David Lede. David Lede owns three lots. He owns Pulelehua 101, 102, 104 and Sherman is Crestview 220. I'm gonna read a statement from Sherman and then I'm gonna read something from David.

Okay, so Sherman's statement is: As the owner 220 Crestview Drive I strongly oppose the issuance of a short-term rental permit for the residence at 100 Pulelehua and also 107...I'm actually here for both so I don't know if I have to come back again. My home is directly across from this location. The admittance of non-owners of full-time rental residence to our gated community on a casual short-term basis will drastically impact the safety and security of our community. And that's Sherman's statement. That's 220 Crestview.

And David's statements are about the same for both so I'll just read one of them. So Mr. Lede he resides in Vancouver so he's not able to be here today which is why he asked me to come down and represent him here. I actually represent Dave in some real estate dealings and I also do property management for him at condo hotels. So he doesn't rent anything in his...in Kapalua and he no intention of ever doing it. Mr. Lede objects to the application, both of the applications seeking Conditional Permits to use 107 Pulelehua and 100 Pulelehua for transient vacation rentals. Pulelehua Place is in Phase 2 of Pineapple Hill in Kapalua Maui. It's a residential gated community is not zoned by the County for short-term vacation rentals. Last year Mr. Lede completed construction of his vacation home at 102 Pulelehua. He chose this area in Pineapple Hill for its beautiful setting, privacy and security, but also because he wanted to be in a quiet area amongst homeowners and not transient renters. 104 Pulelehua is a vacant lot which is right below, 102 Mr. Lede bought that and has landscaped it just to preserve his view so that lot will never be built on. 101 Pulelehua is the home that David owned prior to building 102. That house is currently in escrow and the buyers of that house will be full-time owners and they also are opposing this. I don't have an actual statement from them but they're also opposing the vacation rental.

According to the County of Maui website no conditional permits have been issued for transient vacation rentals in Phase 2 of Pineapple Hill. Mr. Lede would like it to stay that way. I'm just scanning for you.

Ms. Takayama-Corden: Three minutes.

Mr. Kubiak: Transient vacation rentals are not similar, related or compatible with a single family residential neighborhood in a gated community and there's nothing unique about the proposal to use either for transient vacation rentals such that its likely effect on the surrounding area cannot be determined in advance. The proposed use would introduce short-term vacation as in tourists into what would otherwise be a quiet residential community, produce more traffic and noise and reduce privacy and security for residents. These are the inevitable results of allowing transient vacation rentals in a neighborhood not designed or zoned for that purpose. There's no shortage of property zoned. If permitted short-term vacation rental properties in the Kapalua and Napili area including hotels, condominium resorts and single-family homes. A search of the VRBO or similar websites will turn up dozens of properties available for rent. There's no need to add them Phase 2 of Pineapple Hill has no amenities for short-term vacations.

Chair Ball: Thank you. Any questions for the testifier?

Mr. Robinson: I want to question.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Is anybody that you know of in Phase 2 part of the, part of the Pineapple Hill Board of Directors?

Mr. Kubiak: That I know personally? No.

Mr. Robinson: Yeah. Because I'm looking through this paper and see remedies for people but it's through the discretion of the, I guess the Board of Directors and I would encourage maybe somebody in Phase 2 might wanna get on it.

Mr. Kubiak: That I don't know. I will want to say one more thing. I am a property manager, short-term property manager and I will confirm that when you're checking people into residential homes there is no way to tell who's checking in. We actually don't rent residential homes. We rent only condominiums and condo hotels where we control entry and exit. When you're renting into a gated community such as this, the first family shows up and the next thing you know...

Mr. Robinson: That wasn't a question...(inaudible)...thanks.

Chair Ball: Thank you.

Mr. Kubiak: Thank you.

Chair Ball: Thank you, Walt. Okay, moving on here. Melissa Crawley? She went home, beat the traffic. Okay, that's all for my list. So if anyone else who would like to testify please come forward and identify yourself.

Mr. Joseph Henchel: I which to address the application C-3 and also ask you permission afterwards to address the slightly difference circumstances in the C-4 application. We're here to please for your protection to preserve our residential neighborhood. I'm Joseph Henchel. My wife and I are residents of Maui,(inaudible)... in Maui.

Chair Ball: Can you identify yourself please for the record?

Mr. Henchel: Joseph Henchel.

Chair Ball: Thank you.

Mr. Henchel: We searched long and hard for the right house. It had to be in a residential neighborhood with no TVRs, no transient rentals. Finally, we found...thank you, Kurt....Pineapple Hill, Phase 2 and bought our home and our realtor and the HOA office told us that Phase 2 did not allow transient rentals. Everyone else in our neighborhood bought knowing and relying upon zoning going back to the 1980's which does not allow TRVs and Phase 2 was added to Phase 1 they left the CCRs as they were because it didn't matter the zoning overruled

anything that was in the CCRs. Phase 2 would not interfere with the rights of Phase 1 owners and vice versa. The permit applicants bought in September 2015. They could have bought in so many other neighborhoods that allowed TVRs, but they apparently hoped with your assistance to get a TVR income without paying for a TVR permissible property. They don't respect the existing community standard. They hope to make money at the expense of their neighbors. The state motto is Ua Mau ke Ea o ka Aina i ka Pono. That the spirit of the land be perpetuated in righteousness. Like the spirit of aloha itself, this is not some tourist board slogan. It reflects the indispensable and precious ideals by which we here intend to live. Why'd we have zoning to protect neighborhoods from harmful exploitation to perpetuate righteously the spirit of the land. Good zoning deserves respect and preservation. It's a way of guaranteeing that we keep faith with our community. The County Code 19.40.01 says that the a conditional permit requires "special impact or uniqueness such that the effect on the surrounding environment cannot be determined in advance". But there's no special impact or uniqueness here. Just an opportunity for a new owner to profit to the detriment of the neighbors. They propose a use that's neither similar, related nor compatible. This too, violates the intent for conditional permits as expressed in the Code. We have right now that we have personal experience with this across the street an unlawful TVR which the County has perilous to discipline and we know from experience transients don't know nor do they care to follow the rules of our community.

Ms. Takayama-Corden: Three minutes.

Mr. Henchel: And I understand this. At this house we experience noise issues and rubbish and even public lewdness and nudity. When a four-bedroom house is advertised online it sleeps 10, it sleeps 12. You get four or five rented cars clogging the street. The notion that all guest parking will be onsite, it won't happen here.

Chair Ball: Thank you. Any questions for the testifier? None?

Mr. Henchel: Mr. Chairman, would you like me to address the other application later or right now?

Chair Ball: Up to you. You can do it now or when the item, agenda item comes up.

Mr. Henchel: I'll continue with your permission.

Chair Ball: Okay.

Mr. Joseph Henchel: Unlike Pineapple Hill, Phase 1 which has parking areas that is zoned for TVRs, Phase 2 has some narrow roads and no parking areas because we are not zoned for TVRs. It's a road safety issue. Lord help us if emergency vehicles need to pass by a TVR that is active at the wrong time, ambulances, fire engines, et cetera. If a conditional permit is granted we all know, we'll be back when it's expiring begging for relief and I ask why start down this road when we know where it leads. We know too that lure of money will generate more conditional permit applications and we know that more TVR operators will buy the houses

for sale in our community and we will never get our neighborhood back and it's our home. The application by the Auclairs provides falsified statistics aimed at convincing you that ours is a vacation neighborhood not a residential one. It would have been so simple to find out that their numbers weren't true. It makes me believe that this was done deliberately. What does this say about their disrespect for this Commission and for the law and why should you trust any of their other assurances? We're scared ladies and gentlemen. Look at how many of us have filed letters protesting this application. We don't see that the use is similar or related or compatible. We rely upon you our representatives, our neighbors at this point, ...(inaudible)...with regard to the Steiner application I want to emphasize there have been multiple allegations of unlawful TVRs by that owner of luxury retreats. I assume the evidence could be subpoenaed if we were going through all that and they've caused disturbances. Liquor Control Commission, somebody been operating an illegal tavern and then they came and asked you for a license to operate legally and their illegal tavern had disturbed the community, would you consider, would they consider giving them the license? I don't think so. Why expect a better experience if a foreign located...(inaudible)...had the permit. Hasn't the effect on the surrounding environment been demonstrated? The letter of the law will persuade you I hope to reject this application, the righteous spirit of the land will tell you I hope to reject this application. Please protect us. Thank you.

Chair Ball: Thank you. Any questions for the testifier? Commissioner Robinson?

Mr. Robinson: What was your last name again, sir?

Mr. Henchel: My last name is Henchel, sir.

Mr. Robinson: And you said there was across the street from you there was a illegal rental?

Mr. Henchel: And it has I am told been operating for a very, very long time. We were not aware of that when we purchased. We are—

Mr. Robinson: Number 18.

Mr. Henchel: --we are here and it's across and I suppose slightly to the northeast from us.

Mr. Robinson: But we're not talking about the applicant today are we?

Mr. Henchel: The Auclairs have never to our knowledge, their new owners they've never operated a TVR. Steiners I've heard from multiple sources and I don't have personal knowledge have operated unlawful TVRs through luxury retreats.

Mr. Robinson: Thank you so much.

Mr. Henchel: Thank you, Mr. Robinson.

Chair Ball: Any further questions for the testifier? Thank you. Would anyone else like to testify

at this time?

Mr. Dan Auclair: Hi, I'm Dan Auclair and I'm the owner of 107 that's under consideration today. I'd like to just clarify a point. When the Steiners at—

Chair Ball: Sir, you can address—

Mr. Auclair: I can't ask—

Chair Ball: --address the Commission.

Mr. Auclair: Okay, sorry. So there is somebody here that can clarify a point that was just brought up.

Chair Ball: You're one of the applicants though.

Mr. Auclair: I'm one of the applicants.

Chair Ball: Right? Okay.

Mr. Auclair: And I'm trying to just clarify a couple of things.

Chair Ball: Are you the—

Mr. Auclair: 107, I'm Auclair.

Chair Ball: Okay, go ahead, continue.

Mr. Auclair: Okay, so I don't know the Steiners. I've never met them. As other people have said, I'm new to this. I'm the naïve person that came in thinking this was okay. But there has been illegal renting going on. That's been made very clear to me after the fact. And I think what you're seeing is a response to the illegal renting. There apparently is at 116 which was just pointed out, people that have been holding events, having bands, having lots of activity that has disturbed the neighborhood without question. I don't think if you would had legal short-term renting in there you would have seen such a response. One thing I'd like to point out is that there is a very strong process to vet each renter. A renter has...every renter has to, in the party has to sign a form saying he understands the rules. He recognizes that he can be fined and they recognize that they can be evicted. There is a vetting process that can control the right kind of renters. Two, because of the one rental per month we're not gonna see mostly one-week renters. It's not economically justifiable. What we're gonna see is two, three or a longer periods of renting. My intent is to do it strictly by the books. I won't violate...I mean I won't tolerate any violation of the rules. Mark Marcello as we said earlier wanted to be here today. He's got five rentals today that are short-term rentals. He's never had a complaint. He's available 24-hours a day. He's with Whalers Realty that's been a realty firm as you know in West Maui for a long time and I have a lot of faith that he'll be able to enforce the rules

vigorously.

A last point which is maybe a minor point but because of the strong opposition to short-term rentals there's only a few of us in Phase 2 that wish to pursue short-term rentals. Myself, the Steiners, the one person that wrote a letter in favor of short-term rentals also is interested in doing that so at the most we're gonna have four, five short-term rentals out of 30 because everybody else is opposed to it so clearly they're not gonna apply for short-term rentals. So I think the disturbance to neighborhood will really be a minimal amount and I request that you give it a chance. Allow these two for a year and see what happens. See if there are complaints. Now if the Steiners, if he was correct about the Steiners and the site manager is here Linda, she can confirm this. If they did have complaints on the Steiners don't approve it. But it's my belief that they were referring to 116 not 100. So 116 there's no question. Tons of complaints, lots of issues. I don't know about the Steiners let's find out by asking them. So that's just a few comments from me. Thank you.

Chair Ball: Thank you.

Mr. Robinson: Question?

Chair Ball: Let's hold off on questions. 'Cause actually...hold on, let's hold off on questions because we're actually in public testimony right now. I probably should have closed that before we went to you. But if there's anyone else who like to testify at this time they may come forward and do so.

Ms. Jackie Walden: I'm Jackie Walden. I live in Pineapple Hill, Phase 1. Jackie Walden, okay. It's my understanding that because of the different zoning between Phase 1 and Phase 2, the people that bought in Phase 2 thought they were protected from rentals because they're zoned Multi-Family. And based on that the CC&Rs applying to Phase 1 allowing one rental per month they thought they were being protected because they were a different zoning. So when this comes up asking for special consideration, that...they thought they were protected from that. So that's my question, how can they come along with just saying, well we want conditional approval now because we don't like these rules. So I don't think that's quite fair to change the game in the middle...the rules in the middle of the game.

Chair Ball: Thank you. Any questions for the testifiers? None? Oh, sorry, Commissioner Hedani?

Mr. Hedani: Are you the original purchaser of the lot?

Ms. Walden: Yes we are.

Mr. Hedani: At the time you purchased your property were you under the impression that rentals were not permitted?

Ms. Walden: We are in Phase 1 which we knew...that's a different thing, we knew that there

were rentals one per month purchase, but I'm speaking for the people that purchased in Phase 2 thinking that they were...they did not have to deal with the rentals because they were zoned differently.

Chair Ball: Further questions for the testifier? Seeing none, thank you. Continuing with public testimony? Anyone would like to testify at this time can do so? Seeing none, public testimony is closed. Can we get the recommendation from the Staff, Gina?

Ms. Flammer: Did you wanna do questions first?

Chair Ball: Sorry, there was a question for the applicant. If Mr...-

Mr. Auclair: Auclair.

Chair Ball: --Auclair, sorry. Thank you.

Mr. Lay: Okay, I have a question. On your fines, let's say a person renting like that they make loud noise they get fined. Who benefits from the fine? Is it for you or is it...just wondering where does that money go?

Mr. Auclair: I don't know. Can I ask our consultant? If the fine is imposed by the CC&Rs so I would assume to the community.

Mr. Lay: Yes, for me that's what I would think too because they're the ones who are suffering. The people around them are the ones that are being imposed upon the loud music or whatever that's making their life inconvenient in that area with that TVR going on. So, I'm hoping that fine goes back to the community.

Mr. Auclair: It definitely doesn't go to the owner I know that.

Mr. Lay: Okay.

Mr. Auclair: It goes to the community.

Mr. Lay: Okay, thank you.

Mr. Auclair: It would give the owner motivation to fine people though if it went to the owner.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Aloha. So how long do you plan on being in Maui with this home?

Mr. Auclair: On a regular basis?

Mr. Robinson: Yes.

Mr. Auclair: Okay, just a little history. So my wife and I purchased this home through a 1031 as Tom mentioned. 1031 allows us to postpone capital gains on real estate.

Mr. Robinson: I understand.

Mr. Auclair: So my brother and I owned an office building in Sunnyvale, California which is the middle of Silicon Valley. We've owned it for 40 years. Initially of course it took a lot of investment, a lot of work and eventually it paid off very well. And we were able to exchange that basically for the home here. So we're required in order to meet the terms of a 1031 to keep this property as investment property otherwise we'll end up paying a huge amount of tax which I understand is reasonable too, but we decided to take advantage of the 1031. My brother is older than I am. He came down with cancer. We were more or less forced to sell the unit but the timing was good. He's doing well, but who knows what will happen in the future. So my wife and I have been coming to Maui since we got married in 1974. We've always loved Maui. We come almost every year. I've been here three times—

Mr. Robinson: I apologize. How long do you plan on staying on Maui, and all this stuff is great information but everybody is here—

Mr. Auclair: I'm leading up to that. So our plan is to eventually spend three to four months a year here.

Mr. Robinson: Three to four months?

Mr. Auclair: Yes.

Mr. Robinson: And you don't mind being here three to four months and all your neighbors are really can't stand you because of what you did?

Mr. Auclair: You know, that's a very good point and until today I didn't understand how strongly everybody felt about that. I am concerned about that because I'm off on the wrong foot. I've met other neighbors and they've been very cordial and I think once my neighbors get to know me and we've gone a year with no complaints, they'll say hey Dan you know you're managing it well. So I am concerned, yes.

Mr. Robinson: Okay, thank you.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Sir, I have a question about the people that are living in Phase 2 seem to be pretty well off financially and won't need to go into vacation rentals and what is your situation that you reason for you to get into vacation rentals?

Mr. Auclair: Obviously I'm not quite as well off as most of the people there, but the key thing is

is that I have to keep it as investment property because of the 1031 exchange. I can't not make it an investment property. Right, so that means I have to put it on the market. I have to have it at least available for rent. Now I suppose I could have...even that wouldn't fly with the IRS, but I need to keep it investment property.

Chair Ball: Commissioner Robinson?

Mr. Auclair: Now, I'm, I'm...I won't deny that I'm financially in good shape, but having this ability to rent short-term provides two benefits. One it will probably provide more income and more expense, but I think it will net out higher. But two, it will give my wife and I the ability to use the property more than if it were a long-term rental. Right, because we can book ourselves in for a month of the year right now. Long-term we may convert it and not have it be a rental. But short-term we have to have it year round.

Chair Ball: Continue Commissioner Robinson?

Mr. Robinson: So since it's a 1031 property and are you the sole owner of this home or are...like you said, you and brother are the owners?

Mr. Auclair: No. No, my brother opted to do something more conservative and not buy a home.

Mr. Robinson: So it's on a Schedule E then?

Mr. Auclair: So we split. Yeah, he split. He did something...

Mr. Robinson: So is this a Schedule E then or is it under your ownership?

Mr. Auclair: This will be a Schedule E.

Mr. Robinson: And actually you know I have a 1031 as well, and it's also an investment property and you don't have to make money from an investment property 'cause not all things are guaranteed to be profitable.

Mr. Auclair: That's right.

Mr. Robinson: And you can also be a long-term rental and rent it out for 180 days and since you're only gonna be here six months that is also an option to you. So I don't want you to think that you're stuck I mean, to have upset neighbors and having to be a TVR.

Mr. Auclair: I agree 100 percent. Those are our options that we have.

Mr. Robinson: Thank you.

Mr. Auclair: Yes.

Chair Ball: Any questions? Further questions? Commissioner Hedani?

Mr. Hedani: Mr. Auclair, when you purchased the property, when you did your exchange did you have a chance to review the CC&Rs?

Mr. Auclair: Yes.

Mr. Hedani: Under Paragraph 2 of the CC&Rs, the use clause, it states, lots and houses built on lots shall be used only for residential purposes and shall not be used for any gainful occupation, profession or trade or other non-residential purposes.

Mr. Auclair: Yes.

Mr. Hedani: Do you consider a TVR a commercial operation?

Mr. Auclair: I'm not sure I can answer that question. And I also, of course, read the part where it said, you could rent once a month for a minimum of seven days. So that's what I based my purchase on not on that comment which I think is primarily aimed at excluding people running businesses from their home.

Mr. Hedani: You don't consider a hotel a business?

Mr. Auclair: Yes, but I don't think that was the intent of that paragraph. It's more someone that was in the construction business and used it as an office or somebody that was selling items out of their home, that kind of thing.

Mr. Hedani: Thank you.

Chair Ball: Further questions for the applicants? Is there a motion? Recommendation from Gina Flammer, please?

b) Action

Ms. Flammer: The Department is recommending with the addition of 26 conditions that you recommend approval to the County Council. If you'd like I could quickly go through them. It's...you have a copy. I know the neighbors don't have a copy.

Chair Ball: Has the Commission reviewed all the conditions?

Ms. Flammer: I do wanna point out we're only recommending one year.

Chair Ball: One?

Ms. Flammer: One year for the term of the permit.

Chair Ball: Director?

Mr. Spence: And just a little bit for the Commission's information. Conditional Permits as has been pointed out are...you know, cannot be determined in advance. That's one of the things and you can't determine all the impacts in advance. That's one reason why we're recommending one year. This particular person has not rented in the past. That's not often the case with applicants. So he is you know, genuinely attempting to do it the right way. The...this is a soft recommendation. We didn't know that it would get so many objections, you know, when we actually filed the...when we signed the report and wrote it up and everything. As a Department I think we, we say, you know, give the person a chance. As you know, some vacation rentals are big problems, yet other vacation rentals have fit in very well. So this is, you know, it's up to the Commission to make a recommendation to the Council. The Council ultimately decides on Conditional Permits, but you know, it's...well, I'll just leave it at that. It's up to you guys...(inaudible)...

Chair Ball: Commissioner Higashi?

Mr. Higashi: I move that we deny the application for TVR.

Mr. Medeiros: Second.

Chair Ball: Motion by Commissioner Higashi, second by Commissioner Medeiros. Discussion? Commissioner Hudson?

Mr. Hudson: I don't know how the term "harmony" comes into play when you have so many people opposed to it. I don't think this is in harmony in the area for which it's designed. Doing some quick numbers, you have 30 lots and 16 are opposed, 4 are vacant, 7 had no responses. You have 84 percent of the respondents opposed to this. This is not harmonious. I think this is actually the exact opposite. Thank you.

Chair Ball: Further comments? Discussion? Commissioner Robinson?

Mr. Robinson: I just have a comment with the testimony we had today about the trouble with stopping these TVRs and enforcement. I mean, I'm sure they have a security force there and it's just you know, it's not a, it's not a small neighborhood thing. It's all the way up to Pineapple Hill, Phase 2. So this is bad. Thank you.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I moved to deny based upon the fact that asking the question to Phase 2 residents they were not really actively involved in the development of the CC&R which I think is a major concern about what's happening there. Thank you.

Chair Ball: Commissioner Hedani?

Mr. Hedani: This is for a recommendation to the Council.

Mr. Spence: Correct.

Mr. Hedani: So the motion is to recommend to the Council that they deny it.

Unidentified Members: Yeah.

Mr. Ball: Right. Commissioner Duvauchelle?

Ms. Duvauchelle: I was just gonna add that as a neighborhood maybe this would be a good time to go back revisit your CC&Rs and you know, it is confusing. You've got the seven day within the CC&Rs which lead the other gentleman to maybe believe that he was gonna be able to do the vacation rental on a 1031. So I would really strongly since everybody feels so passionately, I would really recommend that you back get your association together and work on your CC&Rs.

Chair Ball: Okay, all...Commissioner Hedani?

Mr. Hedani: My personal perspective on this is basically just based on the map that we received that shows the red and the green and for me, you know, in other applications that have come before us whenever there are three or four opposition to, you know, to the project it gave me cause for concern. With this particular map I think it is the most impressive I've seen so far in terms of opposition to the application and I think it's kind of against the intent of the subdivision and the intent of the original purchasers of that subdivision and I think it's a stretch to use the seven-day rental clause which probably was intended for like relatives where you have relatives coming over and wanting to stay in your house or a friend that you wanna lend your house to. To be able to register with the management of the association. So I support the motion for denial or recommendation for the Council to deny.

Chair Ball: Okay, Commissioner Medeiros?

Mr. Medeiros: Yeah, I seconded the motion. Like everybody is saying 17 to what, 2 or 3? I mean, the neighborhood is telling me that this kind of operation does not fit, you know. I think that I wouldn't recommend it to the Council that they pass this through not if the neighborhood says no. That's it.

Chair Ball: Further comments? All in favor of the motion, raise your hand and say, "aye"?

Commission Members: Aye.

Mr. Spence: That's seven ayes.

Chair Ball: Motion is carried to deny. Recommendation to Council to deny.

Unidentified Speaker: Gotta have no vote.

Chair Ball: Everybody voted.

Mr. Robinson: No.

Chair Ball: Yeah you only have seven.

Mr. Robinson: Oh yeah, that's right.

Chair Ball: That's why I'm the Chair.

It was moved by Mr. Higashi, seconded by Mr. Medeiros, then

**VOTED: To Recommend Denial of the Conditional Permit to the County Council.
(Assenting - R. Higashi, J. Medeiros, L. Hudson, I. Lay, W. Hedani, S. Duvauchelle, K. Robinson)
(Excused - M. Tsai)**

Chair Ball: Okay, moving on, Public Hearing 4, Director?

Mr. Spence: Commissioners, this is an application by Ms. Julie Steiner of the Steiner Family Trust 2010 requesting, also requesting a Conditional Permit in order to operate the Steiner Residence Transient Vacation Rental at 100 Pulelehua, Pineapple Hill and our Staff Planner is Mr. Kurt Wollenhaupt.

Chair Ball: Hold on Kurt, one question to the Commission. I didn't call for a break. Do you guys wanna just keep powering through and if you gotta take a break go and take a break on your own or you guys wanna all for call for a formal?

Mr. Hudson: As needed.

Chair Ball: As needed, okay. Kurt?

- 4. MS. JULIE STEINER, Trustee of STEINER FAMILY TRUST 2010 requesting a Conditional Permit in order to operate the Steiner Residence Transient Vacation Rental at 100 Pulelehua Street, Pineapple Hill Phase 2, TMK: 4-2-007: 009, Kapalua, Island of Maui. (CP 2015/0006) (K. Wollenhaupt)**

Mr. Kurt Wollenhaupt: Good afternoon Members of the Maui Planning Commission. The Item C-4 in front of you does have similarities and parallels to the one that you just heard for the Auclair Family. This is a matter by Ms. Julie Steiner, who is in the audience today along with her husband. Ms. Steiner will be doing her Power Point presentation and will present an overview of her application for a Conditional Permit in order to operate transient vacation rental

in Pineapple Hill, Phase 2 for a four-bedroom, single-family residence built in 2008. There are similarities between this application and the one that was just previously heard. As had been indicated, the applicant has gone through the requirements for the application for a conditional permit. I gave an explanation and overview of why we're here today and I'm happy to answer additional questions but in light of the time I think that if Ms. Steiner continues with her presentation then you can ask me questions specifically on this one.

Ms. Julie Steiner: Good afternoon, my name is Julie Steiner and I'm the owner along with my husband of 100 Pulelehua. So this is a photo of our home. We're in the same position as the Auclairs, well a little bit different. It's our, it's our family vacation home. And the whole reason for our application for the permit is to offset the cost of running such a home. This is just our team that put this together. It's basically myself and our a woman named Chelsea Harding who works for us in Vancouver. We do have currently a property caretaker, Julie Kendy who's, who lives in Maui. However, if we were to be granted a TVR we would have a full-time, on island caretaker.

Mr. Higashi: Speak a little louder.

Ms. Steiner: Oh sorry, sure. I'll get closer.

Mr. Higashi: Thank you.

Ms. Steiner: The request is as mentioned by Kurt we are looking for a transient vacation rental permit and we are looking for it in accordance with our Pineapple Hill CC&Rs. This is just a description of the home where we're located. We've basically gone through this with the beginning of the discussion. This is just an overview of where our property is located. Again, another regional location in Pineapple Hill. We have an aerial photo of it. I'm just gonna whip through all this because you've already heard it. Our main house is a single-family home. It was built in 2008. We purchased it as a family vacation home from an on island developer and architect. It was mentioned that the house had been rented and when we purchased our home it was rentals that were, that came with the home. So originally the developers and architects were struggling to sell the home so I guess they went forward, had rentals. When we acquired the home or purchased the home we had these renters that were given to us at the time so we took them thinking that that was legit. Just based on the CC&Rs we thought that was, that was legitimate.

This is a overview of our home. Pretty much self-explanatory. The next is the parking plan. We've got a double car garage as well as parking at the rear of the garage that would hold two cars and a large driveway. However, with the restrictions on the amount of people that can stay in our home and the amount of people that we would only want in our home would be no different than ourselves living there probably two cars.

Pictures of the insides of our home. This is just an overview of the property itself for a single-family dwelling on an half an acre. It's quite, it's accessible for physically challenged. We've had a friend staying there that is wheelchair accessible only and it worked well for that. So I just

think that's a unique opportunity for a rental.

We have three immediate neighbors as was described earlier and those are secondary homes for the three immediate neighbors. We are only contingent to one neighborhood which is 102 Pulelehua and that home is one of David Lede's homes. His home, the picture that follows doesn't really show it very clearly however, this home is just below us. That's his home that he I believe has just sold or is trying to sell in the...to the right of the picture is where David...well, he doesn't live there but when he uses it that's the backside of his home. It's a driveway and garage. The front of his home, so his living area is on the other side of his 10,000 square foot home, so our areas don't really come into contact like I don't see how our...anybody being on the outside of our like pool deck, lanai would impact his usability of his outside area. His property is also about 20 feet below us.

And I'm not sure if this is the appropriate time or not to defend the statement that we had...in his letter he suggested that we had noisy parties there that complained about his construction and then went onto party at our home. These were actually our friends that were there and they did complain and they were doing it probably on our behalf because his construction went on for four years in our neighborhood. You're only actually allowed to build for a year and a half. We never complained. Just saying.

Also to the north of our property is a large ravine and to the south behind us is Crestview Road and the highway. So there's nobody on any of really those two sides of our property. The other neighbors closest to us are across Pulelehua Road. It's Sherman Brown, who's the other fellow that would be our neighbor and he's actually across the street from us. Kind of got Sherman's house. And the large ravine I was talking about which that's an older photo, it's completely overgrown now and those neighbors we can't even see their house so I doubt they can our house, and they're beyond the 500 feet boundary.

House policies and rules same idea as the Auclairs we would, we would be in accordance with the Pineapple Hill CC&Rs. Quiet hours, I personally don't see how renting it to a family is any different than ourselves being there. We wouldn't allow large parties or groups to gather or weddings unless of course it's our daughter who we hope will get married and have their wedding there. All guests would be provided with a copy of HOA Bylaws and like I said earlier if we were to be granted a TVR we would have a licensed property manager within the area, the designated area. And every other house and policy rule would be followed.

There's our large driveway to park hopefully only two cars in, same with the garage. And as stated by Kurt the reason we are looking for a Conditional Permit is that in Pineapple Hill, Phase 2 the zoning doesn't mention Short-Term Home Rental Permits so we cannot apply for a STRH. So that's only leaves conditional permit for TVR as our alternative.

I don't think I really need to reiterate the conditional permit intent and criteria. You've gone over that. The history of our home is a small number of rentals have occurred at the property. Like I said, when we, we when purchased our home it came with these rentals. When we have done rentals they've been in accordance with the HOA Bylaws. We've submitted all the required

taxes on the rental income and we have never received any complaints with respect to guests at the property personally or Belinda who is the resident property manager of Pineapple Hill.

As far as the comments from opposition the quality of guests seems to be a major issue. This house is our home. It's our home away from home. And we wouldn't want parties staying in our house. We wouldn't allow that. We wouldn't want children under the age of 10 just for wear and tear. We aren't looking to operate it as a money making facility. It's really just to offset some of our costs of running a large second home. We can't be there full time. Our primary home is in Vancouver so when the house is not being occupied we would like to rent it out.

As far as no noise, we would strictly adhere to the bylaws enforced the 9:00 p.m. to 8:00 a.m. quiet hours. Traffic and parking as I've shown in our photos we have a lot of parking area for people staying in the home and also like I said, the maximum you're allowed in the HOA is eight people staying at your home. I would not foresee more than two cars staying at our home which would be no different than if we were using our home as well as our grown children.

And the zoning, clearly we were in the same boat as the Auclairs where the CC&Rs clearly allow regulated short-term rentals. What we're trying to do is just, we're just trying to be upfront. We're trying to do the right thing, getting a permit and do it all legally. Unfortunately, 116 Pulelehua seems to be the big detriment to this whole neighborhood that's why they're not here, they're not applying for permits, they are just doing it illegally. That is not our intention. We're trying to go through all the proper channels to acquire the right permits.

That's about all I can tell you. We love Maui. We'd love to spend more time here. Being Canadian we are restricted. We can be here six months on the year. Our final, the third child is in university now so we see ourselves spending more and more time here once she graduates. Other than that, I'll leave it to you to ask me any questions. Thank you for your time. Sorry it's so late.

Chair Ball: Questions from the Commission...sorry, let's open this up for public testimony at this time they may do so.

a) Public Hearing

Chair Ball: If anyone would like to testify at this time they may do so? Seeing none, public testimony is now closed. Gina or who's doing this Kurt?

Mr. Wollenhaupt: The Department has had, you know a long, long debate here and there certainly are issues, perhaps issues greater than we're going to solve today as to the very anomalous zoning in Pineapple Hill, Phase 1 and Phase 2. Regardless of where the Commission may go today there would seem to merit some discussion about trying to rectify some of these issues of split zoning, but that's a debate for another day.

That being the case the Department did look over the application, reviewed in its entirety, and does recommend approval for a one-year with the 26 conditions. These conditions parallel that

which you looked at before and it would be our hope that if the applicant followed those conditions to the strict letter of the rule, if the applicant followed all of the CC&Rs at Pineapple Hill that this property would be similar to that of a single-family residence in a neighborhood. It would only be one group. There would be people who would value their harmony. It would be a quiet neighborhood and people who are in the home would respect your neighbors. So with that, our recommendation would be for one year. To be the recommendation to be...this Commission would recommend to the Council a one-year conditional permit. Thank you.

Chair Ball: Okay, questions from the Commission? Commissioner Hedani?

Mr. Hedani: I guess I had a question for the applicant.

Chair Ball: Okay. Mrs. Steiner?

Ms. Steiner: Julie Steiner, excuse me, Julie Steiner.

Mr. Hedani: Mrs. Steiner this is just a matter of curiosity. For a house as beautiful as this house is what is the rental rate?

Ms. Steiner: The rate, rate? In low season it would be about 1,400 and over the holidays 2,000.

Mr. Hedani: Per night?

Ms. Steiner: Yes.

Mr. Hedani: Per night?

Ms. Steiner: Per night.

Mr. Hedani: 2,000 during peak season.

Ms. Steiner: Correct.

Chair Ball: Commissioner Robinson?

Mr. Robinson: I have a question for Kurt please. Kurt do you have records of the GET and the TATs for this property?

Mr. Wollenhaupt: They have paid them. They have their licenses and all that. I don't have the specific A-6 tax form. They file a Canadian tax form, but I asked that if they had. They did show me their numbers. So I have every reason to believe they paid all of their taxes in the past. We didn't—

Mr. Robinson: Well, GET is not Canadian.

Mr. Wollenhaupt: Right, but they do have a GET and a TAT license.

Mr. Robinson: And do you know what year they got that?

Mr. Wollenhaupt: I don't have that. It would be the year that they purchased home were their first. I think that Mr Steiner is here, he'd probably be the best one to ask, ask that question so you get him on the record.

Mr. Nick Steiner: Hi, Nick Steiner. When we bought the home in December 2010 it was owned by Jeffrey Long and Associates, and at that time he was renting the home so we inherited some rentals from him hoping that we'd be able to continue obviously. It's like a drug, once you had some, I guess it's good. So we had a tax number from the very first rental and all the way along. I'm sure the offices in one of these buildings can give you any rentals and tax remitted.

Chair Ball: Commissioner Robinson?

Mr. Robinson: After five years why finally try to be legal?

Mr. Steiner: Five years ago there was 25, 30 homes VRBO so you're going with the flow. You're not thinking that it was a major issue. And then ourselves included, oh not it is an issue. I'm looking at *The Maui News* paper and they're saying this oh this fell in the pond. Okay, let's get of Dodge and get off the VRBO and say let's go get a permit.

Mr. Robinson: Last question. When was your rental?

Mr. Steiner: Over the Kapalua Golf Tournament. These people wanted –

Mr. Robinson: January?

Mr. Steiner: Yeah.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I have a question Mr. Steiner.

Mr. Steiner: Yep.

Mr. Higashi: Did you ever have any contact with your neighbors in Phase 2 regarding rental? Since you had it a long time.

Mr. Steiner: No, you know I see, hear Herchel's concerns so I know I can't go in the hot tub without my bathing suit anymore, all the lewdness but I think I make more...I think when I...quite often we have two foursomes come down like ourselves and three couples and when we're outside drinking wine and having a good time I think we probably make more noise than any

renter would have ever made.

Mr. Higashi: So how long did you have this rental thing going?

Mr. Steiner: Oh, when we bought the house it came with rentals.

Mr. Higashi: What year?

Mr. Steiner: December 2010.

Mr. Higashi: 2010. So for five years you haven't noticed any difference in traffic or unusual cars going in.

Mr. Steiners: No. Cars coming in there's been 40, 50 cars parked on our street from's construction. That's...it was like the airport parking. That's the only incident that we've seen.

Mr. Higashi: Did you get involved with the CC&R development of Phase 1 or 2?

Mr. Steiners: Apparently it's very difficult. You have to get the president's seal of approval and it's hard to get on that board without Avery really embracing you.

Chair Ball: Further questions? Commissioner Hedani?

Mr. Hedani: It's not for the applicant. It's for Staff actually.

Mr. Steiner: Okay, all done? Thank you.

Mr. Hedani: Kurt, He's had a TAT license since 2010. He's operated illegally since 2010. Why does the Department bend over backwards to recommend approval for something like this?

Mr. Spence: He's looking at me.

Mr. Wollenhaupt: I'm gonna qualify. What I learned from the applicant, I'll qualify a little bit I did understand that when they bought the house they did have apparently they inherited a couple of short-term rentals, I don't know how many. Okay, fair enough. During the course of my investigation I did call the Pineapple Hill HOA representative who's here today and I asked I'd like to know if it's possible because at Pineapple Hill it's a little different, every person who short-term rentals and I've...in fact, I understand that even the owners themselves when they come onto residence on property they have to sign in. So they have to sign themselves in. I'm not sure if that's in the case, but indeed they do have to sign in other people who are short-term rental. So if I'm renting I have to go to the office and I'm here, I'm a short-term rental and here's my short-term rental. I just have to present myself. So they know who's short-term renting and they know who's not. And so we did find out that the applicant had rented I believe twice in the last six months. One apparently for the Kapalua Golf Tournament. So that gets back to the question, we had the discussion with the Director. There obviously was a lot of opposition that

came, but I think the Department oftentimes tend to think if objections are based upon the possibility of a community problem. If an objection is based we believe this might be the outcome should this happen then I think we'd want to err of the side, well perhaps these people need to be given a chance. If there's such, such convincing evidence that there have been problems, there have been requests for service, there have been complaints, there have been police out there, then we would move then into the denial. But on, certainly on the Auclair we couldn't see that. On the Steiner we did see that that was a rental, but we never saw any police reports. So that's...it was in the balance that we made on the balance of just one year and as indicated if they were to get this permit a year from now they would have to renote all the neighbors within 500 feet. If there was one neighbor that simply said I don't want this in writing then we come back and go through this again.

Chair Ball: I think that there's a disservice to the Steiners and the—

Mr. Wollenhaupt: Auclair?

Chair Ball: --Auclairs from the Department because you know they're kinda set up. Like the Commissioners had said that they...I mean this is overwhelming number of, you know, complaints, not complaints but letters of opposition. Where we've always in the past, look you get neighbor, you tell your applicants to go talk to their neighbors, right? I mean, these applicants seem like very nice people. It may have gotten rid of some these I don't know. I mean it just would seem something that the Department would do for their applicants and say, hey look you got all these complaints this is not gonna fly. I mean, this is an unprecedented amount of...not complaints but opposition letters. You guys might wanna go talk to your neighbors, right? And here's the map of your neighbors and go talk to?

Mr. Wollenhaupt: We do send, we do send the letters of opposition as they were coming. I believe I gave fair warning to certainly Ms. Harding who is the representative that this will be an uphill battle.

Chair Ball: Because I know we've approved ones with denial letters, with multiple denial letters but they applicant went and talked to their neighbor and they hashed out whatever their problems were with their neighbors, right? I mean, we don't live there so this is up to them and their neighborhood to figure this out. And I'm not...I'm just making a comment to the Department that they could probably help applicants. You don't have to do it, I mean, the applicant would have to go and do it.

Mr. Wollenhaupt: My observation on...and Pineapple Hill, Phase 2 residents is that they perhaps need to get to know each other better, I'd make that recommendation.

Chair Ball: ...(inaudible)...

Mr. Wollenhaupt: The Conditional Permit is an odd, it's an odd permit. You know, with a short-term rental we have criteria. If you have this many complaints, if you have this police, the conditional permit is just so open ended. Is it similar, related, compatible? And we have to say

well, yeah you have people that are opposing because they think this could happen, but if it's operated like a house with all these rules it's pretty similar—

Chair Ball: Well, I understand that side, but there's the human side of it, right?

Mr. Wollenhaupt: Right.

Chair Ball: Go talk to your neighbors, you figure this thing out, if it doesn't get figured out they're gonna show up here and say look we hate them because we hate the lewdness of Mr. Steiner.

Mr. Wollenhaupt: Well, actually the...I think the lewd part has to do with another...has to do with another property.

Chair Ball: That's a joke. Commissioner Robinson?

Mr. Robinson: Kurt have you personally seen any complaints from Phase 2 from any other owners in the course of the year, across your desk or the Department?

Mr. Wollenhaupt: Okay, there's something called the request for service which is the online complaint system. There was a complaint filed way back in 2000 and...there was an RFS that was filed for a short-term rental in September of 2012 for the Steiners. Just that they were renting and because there was a VRBO website and then that was taken down and I presume the rentals then stopped. So that's the only evidence that I've ever seen of specific requests for service.

Mr. Robinson: So when you took this application you assumed that it wasn't gonna be that bad because you didn't have, you didn't have these 15 people opposing prior because they never complained about the rental to the County. They just were just upset about it? Is that...(Inaudible)...understanding?

Mr. Wollenhaupt: One of the first, one of the first things Gina and I and Danny all do is we look and see okay have there been police out there? There's a program we have. Have there been requests for service? Have there been complaints? And these applications came in and they were, they were pretty clear and open and we understood these people. This the only way they could even get it.

Mr. Spence: Right.

Chair Ball: Director?

Mr. Spence: And I should say something 'cause I'm ultimately responsible for staff recommendations. What Kurt is saying is correct. When we look at individual applications we look for things like what you're talking about. We look for have there been complaints in the past? Yes, no? You know these came in really clean. It came in really clean. Auclairs have not operated at all. How can you tell what the impact is unless...you know, you can't even

make an assumption on the kind of operator he is or would be because it...(inaudible)... The other one we haven't had complaints about noise or anything. It was just about okay, they were operating and so they pulled down ads and everything, we figure everything's cool. So people are...and these people are coming in making the effort to become legal and get the proper permitting I think that's a big, big plus on their side. We...it really was...we knew that, we knew that there was some opposition. It grew after we signed the staff report recommending approval. You know but at the same time you know, I think my opinion is to give these people a chance. If the Commission doesn't feel that way, that's the way the Commission feels that your prerogative. But the way that these came in we believe that these are good responsible operators and so we recommended approval for a short period of time to give it a try.

Chair Ball: Commissioner Robinson?

Mr. Robinson: Director I understand that we have the push of trying to get everybody legal which is...which everybody is for. My concern is from August 20th from when they apply they're allowed to continually operate without a permit. That I don't understand.

Mr. Spence: Were we aware that they were operating?

Mr. Wollenhaupt: Well, okay I'll...we opened the door, I may as well just...we opened the door, I'll just walk...(inaudible)...

Mr. Robinson: Yeah, let's get it, yeah.

Mr. Wollenhaupt: I made it known to the applicant's representative that I would not like to see that we have short-term rentals going on. And then I called the homeowners association, I said, I really want to know, I want to know everyone who's renting out there and they had to go to board and they had to get Avery and everyone, okay, are we gonna release this? They did release it and they did have that short-term rental. So that was...I wasn't pleased, but okay, they indicated that it had been booked before.

Mr. Robinson: We're not giving permission for people to...because they put a application in to continue to break County Code.

Mr. Wollenhaupt: No, no, no. No.

Mr. Robinson: Okay, they're it on themselves.

Mr. Wollenhaupt: We, we—

Mr. Robinson: Yeah, they're it on their own.

Mr. Wollenhaupt: We tell them, we say, you're not to be, you're not being doing something, you no permit, when you have no permit.

Mr. Robinson: They just continued on their own.

Unidentified Speaker: That's right.

Mr. Robinson: Thank you.

Chair Ball: Who, who is the all-powerful Avery that you guys keep talking about?

Mr. Wollenhaupt: That's Linda, Linda Lyons is the head of the HOA if you had any—

Chair Ball: Okay, Linda maybe—

Mr. Spence: You should identify yourself.

Chair Ball: --come forward.

Mr. Spence: And speak into the microphone and be heard.

Ms. Linda Lyons: I'm Linda Lyons, resident manager of Pineapple Hill.

Chair Ball: Do you have an answer for that question, Linda?

Ms. Lyons: Who Avery?

Chair Ball: Yes.

Ms. Lyons: He's the president of the board. He's been the president for eight or nine years at this point.

Chair Ball: Is he like Madonna or Oprah where he don't have a real name or does he have—

Ms. Lyons: No. He's been around. He's seen a lot.

Chair Ball: You have two names.

Ms. Lyons: Yeah, he runs a pretty tight ship when it comes to this kind of thing. I mean, we've gone from when I got there four and a half years ago to having, okay if you have, you know, if you're renting too often because we're allowed rentals. We've allowed rentals since day one since the CC&Rs were developed in 1987 and then brought across to Phase 2. They've been the same. They were brought in, they were notarized, they were here in the County somewhere, you know, it's all of that. So...

Chair Ball: Does he have a last name?

Ms. Lyons: Avery Loy.

Chair Ball: Thank you.

Mr. Robinson: But you guys rent with permits, right?

Ms. Lyons: No, well no. See it was never...until this whole thing, until this STRH thing came down we've always allowed it. For if it's more than seven days, once a month, you know, and our biggest problem up till then was we had people that did it more than once a month, but it was allowed when I first got there. So the problem was just people that did multiples throughout the month and that kind of thing.

Chair Ball: Commissioner Higashi?

Mr. Higashi: Yes, I have a question.

Ms. Lyons: Sure.

Mr. Higashi: As the resident manager isn't it your responsibility to check on these people who have vacation rentals to see whether they have a permit or not?

Ms. Lyons: Well, actually that's interesting. It's come up in conversation amongst the board. I have asked that question multiple times. I was told that we follow what our CC&Rs have to say and that's, and that's why I think it got confusing once this ordinance came down and that were...is a law in place that you had to have a permit. I went out there and let everybody know time to get a permit. And...but through the association and I am governed by what the board tells me to do that if they have...you know, since we allow it in our CC&Rs it's up to them to go to the County and get it that we weren't mandating them to do so. I know.

Chair Ball: Okay, further questions? Thank you. Where are we? Further questions from the Commission? Seeing none, how about a recommendation then? Motion?

Mr. Robinson: I'd like to make a motion to deny.

Mr. Medeiros: Second.

Mr. Higashi: Second.

Chair Ball: Motion to deny from Commissioner Robinson and seconded by Commissioner Medeiros. Discussion? Commissioner Hedani?

Mr. Hedani: Because we're not the deciding agency on Conditional Permits this is a motion to recommend to the Council.

Mr. Robinson: Recommend.

Mr. Hedani: That we deny, that they deny.

Chair Ball: Thank you for housekeeping.

Mr. Robinson: I apologize, I knew that.

Chair Ball: Makers of the motion are okay with that clarification?

Mr. Robinson: Yes.

Chair Ball: Further discussion? Commissioner Hedani?

Mr. Hedani: Actually my question I think Kurt was a little unfair because the recommendation from the Department came out before I think all of these protest letters came in so really don't know what kind of a reaction you're gonna get. But that being said, I think you know, the map speaks for itself from my perspective. At one point I was accused for I think the Commission was accused of bias against transient vacation rentals. When I looked at the four corners of the document that you know we were provided with today, I try very hard to measure it just from the standpoint of what is legally provided and whether or not we are doing our job relative to approving or disapproving or recommending approval and disapproval. In this case, I was open minded up to the point where individual neighbors came forward and spoke about the problems that they have incurred. I think when we find a transient vacation rental that's out in the middle of nowhere that nobody can hear, nobody can see, nobody can get irritated about because of traffic from my perspective that's perfectly fine. But in this particular case, the map kinda speaks for itself.

Chair Ball: Commissioner Robinson?

Mr. Robinson: The comment I'd like to make is hopefully we'll assist the planners in letting their applicants in the future know that once they put an application and if they were doing something that did not have a permit that it will not be looked on lightly and this Commission will expect you to put your permit in that you will stop all activities until your permit is existing. Thank you.

Chair Ball: Commissioner Higashi?

Mr. Higashi: I would recommend to all the Phase 2 residents that they get actively involved in the development or amendment of the CC&R because we as a Commission definitely look at the CC&Rs of the various communities and we kinda highly believe that whatever's in your CC&R is what goes along and apparently you're already involved with Phase 1 which is a little different apparently.

Chair Ball: Further comments? Director?

Mr. Spence: Just Commission for...just wanna make a statement for the record on CC&Rs and some point we'll discuss this more. I know it's a conditional permit but specifically to short-term

rental home permits it says that we will not consider CC&Rs. It is for your information only. Whatever as to the character of the neighborhood et cetera, et cetera, CC&Rs are a private contract between property owners. It is not a contract with the County. It's not a zoning law. It just pertains to whatever those homeowners have adopted as the bylaws they will abide, not...they're not bearing on the County at all.

Chair Ball: Okay, further comments, questions? Commissioner Hedani?

Mr. Hedani: I guess this is in defense of the County's recommendation for approval. I think to some degree there is a belief that if you issue the permit and they're authorized to operate and they'll legal there are more controls on the operator and there is a bonafide method of registering complaints with the County once they're operating which would go onto the record and there's a process for dealing with it when it comes up for renewals. So although the idea of control may be a fiction in the real world, I think part of the reason for recommending approval may be that your establishing formal controls on the operator. But as I say, we may be just daydreaming when it comes to that.

Mr. Robinson: We have an example where that didn't happen on this application right here.

Chair Ball: Okay, Commissioner Medeiros?

Mr. Medeiros: Yeah, I, too, have a problem with them applying being told you know, to stop until they get permitted. That's like telling me, okay but I'm gonna break the rules anyway so you can give me some rules that I can break. Give me a break, okay. No.

Chair Ball: Okay. Motion? Sorry, we have a motion. All in favor for denial or recommend—

Mr. Spence: Recommending denial to the County Council.

Chair Ball: --recommending denial to the County Council raise your hand and say, "aye".

Commission Members: Aye.

Mr. Spence: That's seven ayes.

Chair Ball: Motion carries to deny. We are gonna take a five-minute recess.

It was moved by Mr. Robinson, seconded by Mr. Medeiros, then

**VOTED: To Recommend Denial of the Conditional Permit to the County Council.
(Assenting - K. Robinson, J. Medeiros, L. Hudson, I. Lay, W. Hedani,
S. Duvauchelle, R. Higashi)
(Excused - M. Tsai)**

A recess was called 4:18 p.m., and the meeting was reconvened at 4:23 p.m.

Chair Ball: Call this meeting back to order. We are on Item E-1. Director?

Mr. Spence: Mr. Tom Crolly on behalf of Mr. and Mrs. Terry Epstein requesting a State Land Use Commission Special Use Permit and Short-Term Rental Home Permit to operate Shambala Short-Term Rental Home within a State Ag District and Danny Dias is our Planner.

E. UNFINISHED BUSINESS

- 1. MR. TOM CROLY on behalf of MR. and MRS. TERRY EPSTEIN requesting a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit in order to operate the Shambala Short-Term Rental Home, a six (6)-bedroom short-term rental home in the State Agricultural District at 120 Kaimanu Place, TMK: 2-1-019: 100, Wailea, Kihei, Island of Maui. (SUP2 2012/0030) (STKM T2012/0012) (D. Dias)**

The Short-Term Home Rental Home Permit application is being brought to the Maui Planning Commission because the neighbor protest threshold has been met.

The first public hearing was conducted on October 8, 2013.

The matter was remanded back to the Maui Planning Commission by the Second Circuit Court for further review.

The Second Public Hearing on the requests was conducted by the Commission at its October 27, 2015 meeting. The record was transmitted to the Commission for the October 27, 2015 Commission meeting. The Commission deferred action on the requests as they were unable to take action to approve or disapprove the requests. (Commissioners: Please bring those documents previously circulated to you to the meeting.)

The matter was taken up again by the Commission at its January 12, 2016 meeting. The Commission deferred action on the requests as they were unable to take action to approve or disapprove the requests. The record was transmitted to the Commission of that portion of the January 12, 2016 meeting dealing with these matters.

Mr. Danny Dias: Thank you, Director Spence. Good afternoon, Chairman Ball and Members of the Maui Planning Commission. I overheard that some of you have to leave soon so I'll be as brief as possible and let the applicant do the bulk of the presentation. Essentially this item has been before you for the sixth time today. It came to you in 2013. It came to you again in 2015, October 27, 2015 to be exact. It was deferred at that meeting. It came to you again in January and it was deferred till today. The significance of October 27 of 2015 is that was 119 days ago,

and as you folks know according to your rules there is a 120-day period where the Commission has to make a decision and if not then it automatically gets approved. So having said that just as you watch the presentation just keep in mind if this gets deferred today it will get approved tomorrow by rule which essentially leaves you with either approval or denial. So with that I'm gonna hand it over to the applicant's representative, Tom Croly.

Mr. Tom Croly: Thank you, Danny. Thank you, Commission. Tom Croly your versed with me, I've been before you on this issue and many others. Again, we're back for the Shambala Short-Term Rental Home application. And I wanna review just a bit of the history of this application.

June 2012 was when the Short-Term Rental Ordinance was codified and the Mayor signed it into law. And immediately upon that happening, the Epsteins contacted me and said we would like to make an application for a short-term rental. I assisted them in putting together that application which I submitted to the Planning Department in October 2012.

Upon making application you send notice to everyone within 500 feet. And nine letters of support were received and four letters of protest. It was those four letters of protest that remanded the decision on this to this body. So on October 8, 2013 we had the public hearing before the Commission. The Department recommended approval of this application. We had bare quorum at that first meeting and a question came up at that meeting about whether or not the lot that provided access to the Kaimanu Estates Subdivision where the property is located came up and a deferral was taken at that time so that we could investigate that.

On November 12, 2013 roughly a month later we came back with the answer to that that in the lot was not part of Maui Meadows and Commission deliberated at that time and did vote in a split decision to deny the permit. The Decision and Order took eight and a half months before it came before the Commission. And this delayed the applicant's opportunity to appeal the decision of this body by that eight and a half months but they did appeal and on February 19, 2015, Judge Loo remanded the application back to this Planning Commission citing that the Planning Commission had violated HRS 91-11.

On October 27, 2015 we had the second public hearing before the Maui Planning Commission and at that particular public hearing we had seven commissioners who were in attendance however only six could participate because one of the commissioners had not reviewed all of the previous materials.

On January 12, 2016 just last month we came back again and we had bare quorum and again the item was deferred and we are now here three years, four months since the application was filed and two years and four months since the planning commission hearing.

I wanna make a point that in that period the applicants have not operated. The applicants have not advertised. The applicants haven't brought anyone in. They said we're gonna do this right. We're gonna follow the law and get our permit even though I want to express there is no way anyone could ever know what's going on on their property. You can't see what's going on on their property. You can't hear what's going on on their property unless you're on that property.

But the applicants have not operated during that period.

There's some things that had been said multiple times and I just feel the need to correct the record. Kaimanu Estates is not and has never been part of Maui Meadows. Kaimanu Estates was at one time part of Kaonoulu Ranch land and it was turned into a subdivision, an agricultural subdivision with nine lots. One of the lots within Maui Meadows was used for access to that and was removed from Maui Meadows at that time.

The Supreme Court of Hawaii affirmed the use of that lot for providing access to the Kaimanu Estates Subdivision. The roads that serve Maui Meadows are in no way, shape or form part of Maui Meadows. They are Maui County public roads and the use of them is not at all restricted in any way, shape or form to the residents of Maui Meadows just as the roads outside here are not restricted in any way to anyone who just lives in the area.

The Maui Meadows Neighborhood Association did not lobby the Council to limit the number of short-term rentals in Maui Meadows. I was on the board of the association at the time and individuals who also were on the board lobbied as individuals but the Maui Meadows Neighborhood Association never took a position with respect to short-term rentals in Maui Meadows that all being irrespective of this issue because this property is not in Maui Meadows.

On the bottom is the route of the cars going to this property as they would come to Maui Meadows. The four folks who did initially show objections, the cars do not go past their house on their route into this property.

There also was discussion about the fence/wall that are between the properties and somehow it got represented that this was a 13-foot wall/fence. It has never been, never was a 13-foot wall. It is between seven and eight feet tall as these pictures show. It was represented this cut off all views and all airflow. It is in conformance with Maui County Code. A building permit was issued in 2001 and it passed final inspection in July 3, 2001. And as you can see air freely flows through the louvers in the wall.

Another thing was put out there that the Epstein's home took away the views of the neighboring properties. This is one of the neighboring properties, one of the folks who this is their second home, their investment home that is for sale and it points out that the epic ocean views are available from this Maui Meadows home. So in no way, shape or form was there...were the neighbors being impacted or their views being taken away by the Epsteins property.

The applicants Terry and Kay Epstein are full time residents here and I can tell you that they are generous sponsors in Maui. They employ many people to keep up the home and you had oral testimony and testimony in support of this application for more than 25 Maui residents. They did open their home to all the folks who had any interest, the neighbors within 500 feet to come view the home, come in, express your concerns. They did this twice before they made application they sent a letter to their neighbors saying hey, we're available if there's any questions that you have and they did this after there were some issues expressed by some of the neighbors.

They also have taken steps to insure that the audio system on their property can never impact the neighbors in any way, shape or form. The volumes are set in such a way that someone renting the property cannot turn the volume up to a level that it could ever be heard at any time by their neighbors.

They've also since the last hearing implemented a proposed additional rule in their house rules and this is on your table that states, guests may not bring personal amplified sound music devices to the property and they cannot be used outside Shambala. The in-house sound system has been custom designed to provide sound and music to the guests in accordance to special volume restrictions related to the terms and conditions for the property short-term rental home permit as specified by the County Administration no exceptions allowed.

These conditions are signed by every potential guest. They have to sign these before they're able to take possession of the property. So you know that that's gonna happen again for the sixth time standing here we ask you to give these folks the chance. They have met every one of the conditions of the Short Term Rental Ordinance. They have met and demonstrated their agricultural uses for the State Special Use Permit and they really deserve the opportunity to show that there really is no impact that their use would recreate. Thank you, Chair.

Chair Ball: Okay, let's open it up for public testimony. Anyone that would like to testify at this time may do so. Please come forward and identify yourself.

Ms. Irene Aroner: Hello. Aloha. My name is Irene Aroner. I'm the owner and principle broker of Tropical Villa Vacations. If the Epsteins are kindly granted a one-year initial permit I would serve as the rental manager for the property. I just wanna make a couple really quick comments. We've been in business 20 years. We employ more than 40 people. Our offices are in Kihei. Myself and all of our staff live very close to this home. We have a lot of long-term employees who are very experienced in this business not only do we have hotel industry experience but also again more than 20 years experience managing apartments in resorts and private homes. In fact, we're board approved as rental agents at Andaz Wailea, Wailea Beach Villas, Montage Kapalua Resort, et cetera. We can only be board approved in these resorts if we operate in a really exemplary and very responsible and very serious manner. I also wanna mention that we manage a couple of homes that are permitted as STRs. There's been no complaints about them and some of them have already been renewed successfully.

I just wanna mention that over the years I've been contacted by many, many homeowners on this island about renting their properties and I have turned down dozens and dozens and dozens of calls and inquiries from homeowners because I believe their properties are not appropriate for this type of use. And in fact, I've heard from people including celebrities who recently even have applied and have been permitted so I find it kind funny that I'm the one who's saying no and being more restrictive and some of these homes are actually being permitted. So I just mention that because it shows that I take this very seriously and I try to be very responsible and only do good business.

I do believe that there's a need for homes like Shambala for very limited sporadic use and it is for people who need privacy and security and they can't stay in hotels. But as it's been said before celebrities are good for Maui so they need to have some place private, confidential and secure there they can come and have a quiet little bit of R&R, enjoy being on Maui, but basically not being in a public place. And I think Shambala serves that purpose for nice families or for celebrities, people who need some privacy.

And I just happen to think that Shambala is really an exceptional property for this purpose. It's quiet. It's bordered by ranch land on one site. It's walled in. It's not a 13-foot wall. The fact that it's a 13-foot wall was mentioned as Tom's...I don't think Tom mentioned that it was brought up in public testimony in front of the County Council recently and it was Akaku T.V. and that was a little surprising 'cause at any rate it's not a 13-foot wall. And the property is managed impeccably by the owners. They really, really care about providing a beautiful home. And in all my years, 20 plus years of doing business on this island I've never met kinder, nicer people. So I really hope that you will consider giving them an opportunity. I pledge to do a responsible professional job and to make sure that you never hear about this property again, that there's no problems and that we only offer it to very responsible and considerate guests. And I wanna thank you for your time today.

Chair Ball: Thank you. Any questions for the testifier? Seeing none, thank you.

Ms. Aroner: Thank you.

Chair Ball: Anyone else like to testify at this time? No, you're heard later Ms. Epstein. You'll have your time. Would anybody else from the public like to ...(inaudible)...Seeing none, public testimony is now closed. Let's see, recommendation.

Mr. Dias: Thank you, Mr. Chair. The Department's recommendation is consistent with what we presented to you back in 2012 and basically we recommend approval of the State Land Use Commission Special Use Permit subject to six conditions and recommend approval of the Short-Term Rental Permit subject to 23 conditions. Thank you.

Chair Ball: Thank you. Mrs. Epstein?

Mrs. Kay Epstein: Thank you. Aloha, Commissioners. I know you've stayed really late.

Mr. Higashi: Can you speak into the mic?

Mrs. Epstein: I said aloha, Commissioner I know it's been a very long day for all of you and appreciate you having the time. I just wanted to say a few things. We'd like to thank you for time. We are grateful for this opportunity. We are very grateful for the time you volunteer on this planning commission. I know it takes a lot of your daily life reading through all the material and attending these meetings as we've been part of several of them so I'm aware and we appreciate it.

We started this process applying for the Short-Term Rental Permit more than three years ago as you're aware. In that time my husband's gone from his 60's to his 70's I've gone from my 50's to my 60's, a few more white hairs thank goodness for hair color. I'm very grateful for that also. While not always an easy process we have learned and grown because of it. Terry and I have laughed and cried during our journey. We have made many friends and our ohana has grown much bigger so we thank...we're grateful for that also. We've been deeply touched by the people, by the people who asked to speak for us. People that we've known since we've in Maui insisted on coming to testify even though it meant taking time off work and losing pay. I could not believe, it brought tears to my eyes to see them and hear. Kinda like being at your own funeral but it was very touching and meant so much to us. It's amazing. It's amazing their bravery because I know how hard it is to stand here and talk to you guys. I know how difficult it is.

This experience has been very humbling and heartwarming too. We've witnessed the best in humans and the worst. Thank goodness it's been more of the good and the best side of the humans. We have hope and we hope you have come to believe we have earned and deserve the chance to operate an STR and prove to you that we will be good operators. You have our word. We will be diligent about making sure our STR is positive addition to the community and causes no problems. Mahalo for your time.

Chair Ball: Thank you. Okay, we'll open it up for questions from the Commission. Commissioner Higashi?

Mr. Higashi: This is for the Epsteins. Looking at your application it's I think everything is okay from my standpoint except the part that it keeps coming up about sound. For some reason you insist on having sound system outside when you rent the facilities and I recall in your earlier application that sound level is something that travels so it's hard to control. And I think that's one of the things that you had agreed upon that you would...if you're home and you're listening to the music at ...(inaudible)...that's not problem. But when guests come then there is a major problem for me to have sound system outside because sound travels. You can't control that.

Mrs. Epstein: May I answer? I understand your concern. Until we received the letters of complaint from the four neighbors we were unaware that there was any sound issue on our property. When we read those letters we hired a specialist to come in and look at the speakers we had around our pool and they advised us that there was new technology we could install. It was very expensive to install these speakers. We had to remove the old ones and put new ones in, but we've had two separate companies come and measure the decibels and we are able with our sound system to control. They cannot turn up. It's programmed. It's in computer programming so a guest cannot turn up the volume any louder than it plays at the pool. Right now I have a friend visiting from the mainland and I put it, the house in guest mode so that she could experience it and give me her comments on what it was like. And she said, you know I really can't hear the music in the pool unless I'm right in front of the speaker. And I said, but that's as loud as we're allowed. So we do not want the sound to travel past our property. If they were put up the picture of the properties I could show you where our house is and our pool and our house sits between, between the property that complained and the pool. I mean it's a lot of

house between there and then the property that thought they could hear us or they complained about being able to hear us.

Mr. Terry Epstein: And if I might just comment? The other thing on October –

Chair Ball: Identify yourself Mr. Epstein.

Mr. Epstein: Terry Epstein. On October 27 of this year when we did our presentation we had somebody here that showed that he was at our house and that as you got to our wall the decibel level of anything was below 65 and that's less than a speaking level if I was standing here...(inaudible)...right now I'm talking. That's the level you would find at the wall if somebody is having a conversation.

Chair Ball: Come forward to the mic. We have problems when you walk away from the mic for our...

Mr. Epstein: I realize that, but that's what happens as you go close to the wall.

Mr. Lay: Great demonstration.

Mr. Robinson: Very effective.

Mr. Higashi: Well, I just wanted to find out from you why you're so insistent on having that sound system there for the guests. If it's for you and you're at home listening outside, it's not a problem.

Mrs. Epstein: Right.

Mr. Higashi: But when you're gone and somebody else is in there as a guest—

Mrs. Epstein: Right.

Mr. Higashi: I think that's a major problem.

Mrs. Epstein: They cannot change the programming and we're trying to avoid someone bringing in their own amplifiers or what do they call that the guitars, yeah amplifiers or any type of a boom box. I don't know what the kids use these days, but they're not gonna be allowed to do that. Then they could amplify music louder than...if there was nothing there someone would go out and buy something.

Mr. Higashi: So my question to you is can you turn off the sound system when you're renting it to guests that's my question?

Mr. Epstein: Can I ask a question of the Commission?

Chair Ball: No. Just answer the question of the Commissioner.

Mrs. Epstein: We could.

Mr. Epstein: We could turn it off completely and not have outdoor sound, but we've chosen to make it so the sound—

Mrs. Epstein: No, just...We could.

Mr. Epstein: Oh, okay.

Mr. Higashi: Thank you. That's all I wanted to know whether you can or cannot.

Mrs. Epstein: We could. It's possible.

Chair Ball: Further questions for the Epsteins?

Mr. Lay: Motion for approval.

Mr. Hudson: Second.

Chair Ball: Motion to approve by Commissioner Lay, seconded by Commissioner Hudson. Discussion? Commissioner Robinson?

Mr. Robinson: I wasn't here the whole time of this odyssey, and you know, there's a fine line between diligence and stubbornness. I'm hoping that you guys are the diligent part. I apologize but I do not have...I've had it all day with all this paper, but I didn't have the last whatever recommendations, but I notice that we have this sheet where guests are prohibited to do this, you know bring amplified sound. Are we allowed to put this on the conditions instead of just having this as part of Tropical Villas? Are you guys—

Mrs. Epstein: Yes, we're fine with that.

Mr. Robinson: --...(inaudible)...do that?

Mr. Epstein: Yes. Absolutely.

Mrs. Epstein: We would love to be able to tell them.

Mr. Epstein: That's why we had them put that in their rules.

Mr. Robinson: Would that help you? I didn't say fix, I said help.

Chair Ball: If the Epsteins are okay with that and the Department's okay with that.

Mr. Spence: We're fine.

Chair Ball: We can add that to the recommendation.

Mrs. Epstein: We would welcome that.

Chair Ball: Further questions? Seeing none, all in favor—

Mr. Murai: I'm sorry Mr. Chair, if I may? I'm sorry to interrupt.

Chair Ball: Corporation Counsel?

Mr. Murai: Because there have been so many continuances and so I would like for the Commissioners to affirmatively state that they are able to vote because they have...if they have missed any meeting that they've apprised themselves of what happened at the meeting they missed by reviewing the minutes of any meetings that they've missed.

Mr. Hudson: I'm up to date on it. I can vote.

Chair Ball: I will take the rest of the silence as affirmative that we are all up to speed on the record. All in favor of the motion raise your hand and say, "aye".

Commission Members: Aye.

Chair Ball: One, two,...All opposed? One, two.

Mr. Spence: Two opposed.

Chair Ball: And abstention? One abstention.

Mr. Spence: Two abstention.

Chair Ball: Is there another motion? The abstention...sorry, the abstention are in the positive. That was two abstentions and two yes votes and the Chair votes in favor. The motion carries.

It was moved by Mr. Lay, seconded by Mr. Hudson, then

**VOTED: To Approve the Land Use Commission Special Use Permit and Short-Term Home Rental Permit as Recommended by the Department.
(Assenting - I. Lay, W. Hudson, K. Ball, J. Medeiros-Abstained, K. Robinson-Abstained)
(Dissenting - W. Hedani, R. Higashi)
(Excused - M. Tsai, S. Duvauchelle)**

Mr. Lay: Can you believe it? Do you guys believe it?

Chair Ball: All right, we're still in session. We're still in session. We have a couple more agenda items that we're gonna try and finish up here in the next ten minutes. Going with that—

Mr. Spence: F-1.

Chair Ball: F-1 can you get that done in time or do you wanna defer that? Okay, go ahead Gina Flammer. Oh, sorry, Director?

Mr. Spence: Adoption of the Written...this is for the Adoption of Written Decision and Order on the Commission's denial of the application by Amanda and Cathleen Wilson and Mike and Roxanne Whitehurst and Gina will explain.

F. ADOPTION OF WRITTEN DECISION AND ORDER

- 1. Having voted on May 26, 2015 to deny the requests by AMANDA and CATHLEEN WILSON and MIKE and ROXANNE WHITEHURST requesting a State Land Use Commission Special Use Permit and a Short-Term Rental Home Permit in order to operate a six (6) bedroom short-term rental home operation in two dwellings located in the State Agricultural District at 562 Kai Hele Ku Street, TMK: 4-7-009: 044, Lahaina, Island of Maui. (SUP2 2015/0001) (STWM T2015/0001) (G. Flammer)**

AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH THEIR ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES PURSUANT TO SEC. 92-5(a)(4), HRS.

Mr. Gina Flammer: Okay, so just very briefly. I know you've seen these before. What you're doing today is you're adopting what's in the document is what really happened that day. This is your opportunity if you wanted to add any facts to it, you could go ahead but you're not reaffirming your decision. You're just affirming whether what's in here is accurate and correct.

Chair Ball: Corporation Counsel?

Mr. Murai: What Ms. Flammer said is correct. What basically what you are doing by approving, you're saying yes that the Findings of Fact, Conclusion of Law and Order are accurately reflect what the Commission decided on that day. So in other words we can't change what happen, the main thing is that what we're doing is we are...you're saying that yes it is accurate not that you disagree with it, agree with it.

Chair Ball: Thank you. Okay, is there...do we need a motion for that?

Mr. Murai: Move to accept or move to adopt. I don't know what the...Will?

Mr. Spence: I don't know...I know we want to go away with everybody's signatures.

Mr. Robinson: Just Keone's.

Ms. Flammer: Just the Chair.

Mr. Spence: Oh, just the Chair.

Mr. Robinson: Move to accept the Findings of Fact.

Mr. Hudson: Second.

Chair Ball: Moved by Commissioner Robinson, second by Commissioner Hudson. Any discussion? All in favor? We don't need public testimony for this item? Is there anyone in the gallery that would like to testify at this time? Just Keith. Keith says no. Public testimony is now closed. All in favor of the motion, please raise your hand and say, "aye".

Mr. Spence: Six ayes.

Chair Ball: The motion carries unanimous.

It was moved by Mr. Robinson, seconded by Mr. Hudson, then

**VOTED: To Adopt the Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
(Assenting - K. Robinson, L. Hudson, J. Medeiros, I. Lay, W. Hedani, R. Higashi)
(Excused - M. Tsai, S. Duvauchelle)**

Chair Ball: Director's Report...sorry, Acceptance of the Action Meeting Minutes of February 9, 2016?

G. ACCEPTANCE OF THE ACTION MINUTES OF THE FEBRUARY 9, 2016 MEETING.

Mr. Lay: So move.

Mr. Higashi: Second.

Chair Ball: Moved by Commissioner Lay, second by Commissioner Higashi. All in favor...sorry any discussion? All in favor say, "aye"?

Commission Members: Aye.

Chair Ball: Any opposed? Motion carried unanimously.

It was moved by Mr. Lay, seconded by Mr. Higashi, then

**VOTED: To Accept the Action Minutes of the February 9, 2016 Meeting.
(Assenting - I. Lay, R. Higashi, J. Medeiros, L. Hudson, W. Hedani,
K. Robinson)
(Excused - M. Tsai, S. Duvauchelle)**

Chair Ball: Director's Report?

H. DIRECTOR'S REPORT

- 1. Notification of the issuance of the following Special Management Area (SMA) Emergency Permit:**

January 29, 2016 SMA Emergency Permit Approval Letter to Mr. Chris Conger of Sea Engineering, Inc., for emergency erosion protection of approximately 200 ft. of shoreline adjacent to the Hyatt Regency Maui located at 200 Nohea Kai Drive, TMK: 4-4-013:008, Kaanapali, Island of Maui. (SM3 2016/0001) (SSA 2016/0007) (K. Scott)

Mr. Spence: Number 1 on the Director's Report is we're notifying you we issued an SMA Emergency Permit on January 29, 2016. If you have any questions...this is just for your notification. If you have any questions, Keith is here, Mr. Keith Scott to fill in the blanks.

Mr. Keith Scott: I passed out a briefing with some pictures so if you have any questions let me know.

Mr. Robinson: I have a question for SMA Minor but not on this one.

Chair Ball: Okay, if there's no questions, go ahead Commissioner Lay?

Mr. Lay: Temporary?

Mr. Scott: Yes.

Mr. Lay: Okay.

Chair Ball: If there is nothing else this is for information purposes so we'll move onto Item 2.

- 2. Commission Quorum for the March 22, 2016 meeting**

Chair Ball: Oh, this is to see how many people are gonna be in town. It is spring break and wanted to make sure we had a meeting or we had a quorum for that meeting.

Mr. Lay: When is it:?

Chair Ball: March 22nd.

Mr. Robinson: I will not be here.

Chair Ball: Who's here? I'm here. I think only Keaka.

Mr. Medeiros: The last meeting Sandy said she's coming.

Chair Ball: Okay. Item 3?

3. Discussion of Commission Member Attendance

Chair Ball: Discussion of Commission Member attendance.

Mr. Spence: I know the last time Commissioner Hedani asked to see attendance or did we have a report? Okay, we can defer this to the next time.

Chair Ball: Okay, the purpose of that was to make sure people attended meetings because there is a rule if you miss three meetings that's unexcused not just three meetings then you will be asked by the Chair resign from this Commission. Anyway, that's what that's about.

4. SMA Minor Permit Report

5. SMA Exemptions Report

Chair Ball: Item 4 and 5, SMA Minor and Exemptions. There is a question.

Mr. Robinson: I had one question on the temporary building at the Four Season's beach. There's a little hale, tent?

Mr. Spence: I only see one.

Mr. Robinson: It was on the bigger packet not on these two. Manele Bay tent Four Seasons Resort.

Mr. Spence: Yeah, that would be Lanai.

Chair Ball: Doing a special event or something like that.

Mr. Spence: And that was in front of the Lanai Planning Commission. This is all SMA Minors.

Mr. Robinson: I saw just the name over there. Thought it was name of their thing. Got you.

Okay.

Chair Ball: Any other questions on that? Seeing none, Future Agenda Items.

Mr. Spence: Okay, Commissioners on March 8 we're gonna have...

Mr. Robinson: Excuse me, this says improvements Wailea and Four Seasons Maui?

Chair Ball: Then it's at that one. Are you asking what it is or?

Mr. Robinson: What it is and what's the setback?

Mr. Spence: I don't know.

Chair Ball: Typically those have been like you know, the white tents. They gotta get permits those, special events. They put 'em up, they take 'em down.

Mr. Robinson: I mean, we don't know? Well, the time of year that's why the beach comes and goes right?

Mr. Spence: When we review an SMA Exemption, any kind of application like that for a Minor or an Exemption we make sure they're not gonna put the tent in harm's way. It's setback and out from the beach. We don't let them put it in the setback area. I can't tell you exactly where this is.

Mr. Robinson: That's where my concern was the setback 'cause I saw one time before and depending on the time of year, you know and ebb and flow of the sand and one was...it was pretty close. That's all.

Chair Ball: Okay, did you get to the future agenda items?

Mr. Spence: No we didn't.

6. Discussion of Future Maui Planning Commission Agendas

a. March 8, 2016 meeting agenda items

Mr. Spence: Three public hearing items next time. Mr. James Argyropoulos. I'm so proud of myself that I can pronounce his name. SMA Permit and Shoreline Setback Variance for debris removal over in Kuau. Ms. Sylvia Hamilton Kerr requesting SMA Permit or excuse me, Special Use Permit to do special events in the State Ag District in out in Haiku. And then Mr. Betham and Ms. Olga Munoz ...(inaudible)...requesting a Bed and Breakfast Home Permit also in Haiku. And then there's some Unfinished Business of Walgreens. And then we're going...in the Director's Report we'll bring to you for your approval or waiver a two-year time extension for an SMA Permit at the Westin Maui and then we'll also for notification purposes we issued

another SMA Emergency Permit.

Chair Ball: Okay, any questions on that. Seeing none, thank you all for coming. Meeting adjourned.

I. NEXT REGULAR MEETING DATE: MARCH 8, 2016

J. ADJOURNMENT

The meeting was adjourned at 5:00 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Keone Ball, Chair
Sandy Duvauchelle (excused at 4:36 p.m.)
Wayne Hedani
Richard Higashi
Larry Hudson
Ivan Lay
Jason Medeiros
Keaka Robinson
Max Tsai, Vice-Chair (excused at 2:42 p.m.)

Others

Will Spence, Director, Planning Department
Gary Murai, Deputy Corporation Counsel, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works (excused at 2:12 p.m.)